S. HRG. 106–1099

S. 376, OPEN–MARKET REORGANIZATION FOR THE BETTERMENT OF INTERNATIONAL TELECOMMUNICATIONS ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

MARCH 25, 1999

Printed for the use of the Committee on Commerce, Science, and Transportation

U.S. GOVERNMENT PRINTING OFFICE

65–038 FTP WASHINGTON : 2002

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

JOHN MCCAIN, Arizona, *Chairman*

TED STEVENS, Alaska	ERNEST F. HOLLINGS, South Carolina
CONRAD BURNS, Montana	DANIEL K. INOUYE, Hawaii
SLADE GORTON, Washington	JOHN D. ROCKEFELLER IV, West Virginia
TRENT LOTT, Mississippi	JOHN F. KERRY, Massachusetts
KAY BAILEY HUTCHISON, Texas	JOHN B. BREAUX, Louisiana
OLYMPIA J. SNOWE, Maine	RICHARD H. BRYAN, Nevada
JOHN ASHCROFT, Missouri	BYRON L. DORGAN, North Dakota
BILL FRIST, Tennessee	RON WYDEN, Oregon
SPENCER ABRAHAM, Michigan	MAX CLELAND, Georgia
SAM BROWNBACK, Kansas	

MARK BUSE, *Staff Director*
Martha P. Allbright, *General Counsel*
IVAN A. SCHLAGER, *Democratic Chief Counsel and Staff Director*
KEVEN D. KAYES, *Democratic General Counsel*

SUBCOMMITTEE ON COMMUNICATIONS

CONRAD BURNS, Montana, *Chairman*

TED STEVENS, Alaska	ERNEST F. HOLLINGS, South Carolina
SLADE GORTON, Washington	DANIEL K. INOUYE, Hawaii
TRENT LOTT, Mississippi	JOHN F. KERRY, Massachusetts
JOHN ASHCROFT, Missouri	JOHN B. BREAUX, Louisiana
KAY BAILEY HUTCHISON, Texas	JOHN D. ROCKEFELLER IV, West Virginia
SPENCER ABRAHAM, Michigan	BYRON L. DORGAN, North Dakota
BILL FRIST, Tennessee	RON WYDEN, Oregon
SAM BROWNBACK, Kansas	MAX CLELAND, Georgia

CONTENTS

WITNESSES

APPENDIX

S. 376, OPEN–MARKET REORGANIZATION FOR THE BETTERMENT OF INTERNATIONAL TELECOMMUNICATIONS ACT

THURSDAY, MARCH 25, 1999

U.S. SENATE,
SUBCOMMITTEE ON COMMUNICATIONS,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to notice, at 2 p.m., in room SR–253, Russell Senate Office Building, Hon. Conrad Burns, chairman of the subcommittee, presiding.

Staff members assigned to this hearing: Maureen McLaughlin, Republican counsel; Paula Ford, Democratic senior counsel; and Al Mottur, Democratic counsel.

STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM MONTANA

Senator BURNS. We will call the Subcommittee together and we will get started. It is a pretty heavy afternoon. There are several Senators who want to participate in a briefing later on this afternoon, so there is quite a lot of activity.

I am going to withhold my statement because it is great to have the chairman of the full committee here, Senator McCain. He, too, is on one of those break-neck kind of schedules. I appreciate him coming and I appreciate all of the witnesses coming today. This is a very important hearing. This may be the hearing that we really need before we go to markup on this piece of legislation.

So, I will withhold my comments. Senator McCain, thank you for coming today, and we look forward to your statement.

[The prepared statement of Senator Burns follows:]

PREPARED STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM MONTANA

I want to welcome everyone to this hearing on international satellite communications reform.

Our efforts on satellite reform this year have been marked by a spirit of bipartisanship that has resulted in the ORBIT bill gaining widespread support. In fact, I am pleased to announce that the ORBIT bill is now cosponsored by a majority of the Commerce Committee. I want to thank Chairman McCain and Senators Brownback, Dorgan, Bryan, Wyden, Ashcroft, Rockefeller, Hutchison, Abraham, Frist and Cleland for cosponsoring my legislation to ensure the rapid privatization of INTELSAT.

When I decided to take on the important challenge of encouraging competition through deregulatory measures in the rapidly evolving international satellite communications industry, I declared five basic principles that would serve as the foundation for this effort:

(1) The legislation must enhance competion in the global satellite communications market
(2) The legislation must be consistent with the United States' existing treaty obligations
(3) The legislation must enhance global satellite connectivity to all areas, including remote and rural
(4) The legislation must ultimately increase consumers' choices, enable technological innovation and lower costs
(5) The legislation cannot impose any unnecessary new regulatory schemes on this vibrant global industry.

These principles are incorporated into the ORBIT bill which I introduced on February 4. One of my highest priorities for 1999 is to see international satellite reform legislation enacted this year. S. 376 reflects my commitment to working with my friend, the distinguished House Commerce Committee Chairman Mr. Bliley, to achieve that goal as quickly as possible this year.

The ORBIT bill does the following:

- establishes defining criteria for INTELSAT privatization, including a new date certain of 2002
- eliminates INTELSAT's and COMSAT's privileges and immunities
- creates a level competitive playing field for satellite systems
- creatively uses market access as an incentive fopr a prompt, pro-competitive privatization of INTELSAT
- eliminates the antiquated ownership restrictions on the U.S. Signatory to INTELSAT
- ends the role of the U.S. government in the commercial satellite operations

It is my main objective that INTELSAT privatization will lead to enhanced competion in telecommunications services, resulting in real consumer benefits of more choices, lower prices and new services. I am very interested in the views of all of the witnesses on my bill. I look forward to hearing your thoughts on how to best encourage competition in the global satellite market.

I especially want to thank the witnesses today for taking time out of their very busy schedules to testify before this Subcommittee. I look forward to your insights on the issues before us.

STATEMENT OF HON. JOHN McCAIN,
U.S. SENATOR FROM ARIZONA

The CHAIRMAN. Thank you, Mr. Chairman. It is obvious that there is great interest in this hearing, Mr. Chairman.

I think our witnesses and others should know that, with the Kosovo situation, there is a briefing this afternoon, which may cause some of our members to not be here who otherwise would be here. This is a very important issue to this committee and to the entire Congress and to the American people. I would like to thank all of the witnesses who are appearing today. I would especially like to thank Chairman Burns for convening this subcommittee hearing on the important issue of international satellite reform.

Over 35 years ago, the Communications Satellite Act of 1962 helped create a framework for providing a commercial satellite system to serve the nations of the world. Through this Act, the United States joined with other countries to form INTELSAT, an Intergovernmental Organization that provided basic telecommunications services.

The success of INTELSAT has helped foster advances in satellite technology. However, in the 37 years since the enactment of the Act, the landscape, as would be expected due to the inevitable march of advancing technology, changed. Commercial satellite systems now offer telecommunications services to many countries. Soon, in the not-too-distant future, these commercial satellite sys-

tems will be providing broadband and other advanced telecommunications services around the globe.

INTELSAT management itself has recognized that these changes warrant privatization in order for INTELSAT to compete in this growing global market. Mr. Chairman, it is time to adapt our regulatory framework to conform to this new world. In recognition of that, I am pleased and proud to cosponsor Senator Burns's ORBIT bill. I strongly believe that Congress must pass fair and effective satellite reform legislation this session. I commit to my colleagues that I will make it a priority to do so.

Once again, I want to commend Senator Burns on his leadership in this very complex and difficult area. The Burns's bill provides a principled basis for examining this complex and important issue. I recognize that there are different perspectives and viewpoints on international satellite reform. We will need to work out these differences. I personally have some concerns, but I am confident we will work all these issues out.

Again, I thank Senator Burns, and I look forward to hearing our witnesses' views. Thank you, Mr. Chairman.

[The prepared statement of Senator McCain follows:]

PREPARED STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA

Good Afternoon. I would like to thank all of our witnesses for appearing today, and I commend Chairman Burns for convening this subcommitee hearing on the important issue of international satellite reform.

Over thirty-five years ago, the Communications Satellite Act of 1962 helped create a framework for providing a commercial satellite system to serve the nations of the world. Through this Act, the United States joined with other countries to form INTELSAT, an intergovernmental organization that provided basic telecommunications services. The success of INTELSAT has helped foster advances in satellite technology.

However, in the 37 years since we enacted the Satellite Act, the landscape has, as would be expected, due to the inevitable march of advancing technology—changed. Commercial satellite systems now offer telecommunications services to many countries. Soon, in the not too distant future, these commercial satellite systems will be providing broadband and other advanced telecommunications services around the globe. INTELSAT management itself has recognized that these changes warrant privatization in order for INTELSAT to compete in this growing global market.

It is time to adapt our regulatory framework to conform to this new world. In recognition of that fact, I am pleased to cosponsor Senator Burns's ORBIT Bill. I strongly believe that Congress must pass fair and effective satellite reform legislation this session. And I commit to my colleagues that I will make it a priority to do so.

Once again, I commend Senator Burns on his leadership in this complex area. The Burns's bill provides a principled basis for examining this complex and important issue. I recognize that there are different perspectives and viewpoints on international satellite reform, and we will need to work out those differences. I personally have some concerns, but I am confident we will work all these issues out. Again, I thank Senator Burns and I look forward to hearing our witnesses' views.

Senator BURNS. Thank you, Mr. Chairman. We appreciate that. We have way too many chairmen here; I can see that right now. [Laughter.]

The CHAIRMAN. We have another chairman just show up.

Senator BURNS. Another one just did. He is probably the most important one.

The CHAIRMAN. True.

Senator BURNS. Do you have a statement?

Senator STEVENS. I have no statement. I am here to congratulate you for holding the hearing and to listen.

Senator BURNS. Well, that is different in this town. [Laughter.]

I want to welcome everyone to this hearing this afternoon on the international satellite communications reform. Our efforts on satellite reform this year has been marked by a spirit of bipartisanship that has resulted in the ORBIT bill gaining widespread support. In fact, I am pleased to announce that the ORBIT bill is now cosponsored by the majority of the Commerce Committee. I want to thank Chairman McCain and Senators Brownback, Dorgan, Bryan, Wyden, Ashcroft, Rockefeller, Hutchison, Abraham, Frist, and Cleland for cosponsoring the legislation to ensure rapid privatization of INTELSAT.

When I decided to take on this important challenge of encouraging competition through deregulatory measures in a rapidly evolving international satellite communications industry, I declared five principles that would serve as the foundation for this effort:

The legislation must enhance competition in the global satellite communications market. The legislation must be consistent with the United States' existing treaty obligations. The legislation must enhance global satellite connectivity to all areas, including remote and rural areas. The legislation must ultimately increase consumer choices, enable technological innovation, and lower cost. The legislation cannot impose any unnecessary new regulatory schemes on this vibrant, global industry.

These principles are incorporated in the ORBIT bill, which I introduced on February the 4th. One of my highest priorities for 1999 is to see the international satellite reform legislation enacted this year. S. 376 reflects my commitment to working with my friend and the distinguished House Commerce Committee Chairman, Mr. Bliley, to achieve that goal as quickly as possible this year.

The ORBIT bill does the following: It establishes defining criteria for INTELSAT privatization, including a new date certain of 2002. It eliminates INTELSAT's and COMSAT's privileges and immunities. It creates a level, competitive playing field for satellite systems, creativity or use market access and incentive for prompt, procompetitive privatization of INTELSAT. It eliminates the antiquated ownership restrictions on U.S. signatory to INTELSAT. It ends the role of the U.S. Government in commercial satellite operations. It is my main objective that INTELSAT privatization will lead to enhanced competition in telecommunications services, resulting in real consumer benefits of more choices, lower prices and new services.

I am very interested in the views of all the witnesses on this bill today. I look forward to hearing your thoughts on how best to encourage competition in the global satellite market. I especially want to thank the witnesses today for taking time out of their busy schedules to testify before this subcommittee. I look forward to your insights on the issues before us.

Today we have on the first panel the Hon. Vonya McCann, U.S. Coordinator for International Communications and Information Policy, from the Department of State, here in Washington, D.C.; and Mr. Roderick Porter, Acting Bureau Chief, International Bureau, Federal Communications Commission. I would ask Ms.

McCann to offer your testimony at this time. I would tell you that if you want to summate your testimony, your entire testimony will be made part of the record. Thank you for coming today.

STATEMENT OF HON. VONYA B. McCANN, UNITED STATES COORDINATOR, INTERNATIONAL COMMUNICATIONS AND INFORMATION POLICY, U. S. DEPARTMENT OF STATE

Ambassador MCCANN. Thank you, Mr. Chairman.

We appreciate the opportunity to present the Administration's views on the privatization of INTELSAT and your proposed legislation, S. 376. The Administration, in partnership with Congress, has worked tirelessly for more than 5 years to bring about the restructuring and privatization of the intergovernmental satellite organizations—the ISOs—INTELSAT and Inmarsat. These efforts have borne fruit. Next month, Inmarsat will complete the privatization of its remaining business operations. INTELSAT's new Director-General, who was elected on a privatization platform, has stated unequivocally his commitment to achieve full privatization by 2001.

The Administration does not believe that any legislation is necessary to ensure a successful outcome to our international negotiations or to protect the U.S. market from harm if INTELSAT's or Inmarsat's privatization goes astray. By negotiating constructively with the 143 INTELSAT member governments and the 86 Inmarsat member governments, we have made steady, if sometimes slow, progress toward our goals of a more competitive satellite market and a level playing field.

The Administration will continue to be aggressive in ensuring that the plans to restructure and privatize the ISOs are pro-competitive. Following ISO privatization, the FCC and the Antitrust Division of the Justice Department will have ample authority under existing law to protect U.S. interests. Nevertheless, if Congress does choose to address ISO privatization in legislation, we believe the legislation should reflect three key principles:

First, Congress should be careful not to limit access by INTELSAT to the U.S. market in a way that harms American consumers, particularly in the fast-growing areas of high-speed data transmission, Internet access and video. Second, privatization must create a level playing field between INTELSAT and its commercial competitors, both U.S. and foreign. Third, any legislation must be consistent with our international obligations.

With respect to S. 376, the Administration strongly supports the objective of the bill to promote competition by encouraging the privatization of INTELSAT. Moreover, we are quite pleased that the bill includes provisions to allow the United States to maintain its membership in the residual intergovernmental organization following privatization of Inmarsat's business operations next month.

Although we believe S. 376 is a very positive contribution to the debate over ISO privatization, we would like to see several provisions modified or eliminated, in keeping with the three principles I noted above. Section 603(b) prohibits INTELSAT from providing certain services in the U.S. market prior to privatization. Although this provision probably will not have any practical effect, in principle, we oppose inflexible statutory service restrictions because

they would limit competition and resulting choices for U.S. consumers.

Section 613 requires the President, following a decision by INTELSAT's members to privatize, to certify that the privatization is pro-competitive. This provision is unnecessary. The Administration will follow a rigorous review process to ensure that INTELSAT's privatization is pro-competitive before the United States agrees to support it within INTELSAT.

Section 614 requires that the FCC be bound by the President's certification under Section 613. This section should be modified to make clear that it would not reduce existing FCC authority.

Finally, let me address the topic of direct access to INTELSAT, which your bill would effectively prohibit. Direct access to INTELSAT, broadly speaking, is a pro-competitive policy that has benefited consumers in countries that have implemented it. However, direct access in this country at this time probably will produce only modest benefits for U.S. consumers of satellite services.

First, the savings from bypassing COMSAT are less than those from bypassing other INTELSAT signatories that are, or were, vertically integrated telecommunications monopolies. Second, INTELSAT privatization is in sight, and once INTELSAT becomes a private provider, anyone should be able to access it directly. The issue of direct access will become moot.

Moreover, we would urge that any direct access scheme be implemented in a way so as to avoid a policy of "fresh look." The Federal Government should not overturn privately negotiated contracts. In addition, COMSAT should be reimbursed for its true costs of providing INTELSAT services, which are not entirely captured by the INTELSAT utilization charge.

In closing, let me express my gratitude for the committee's interest in these issues, and the close cooperation we have enjoyed with the staffs from both sides of the aisle. I request that my full written statement be part of the record. Thank you.

[The prepared statement of Ambassador McCann follows:]

PREPARED STATEMENT OF HON. VONYA B. MCCANN, UNITED STATES COORDINATOR, INTERNATIONAL COMMUNICATIONS AND INFORMATION POLICY, U.S. DEPARTMENT OF STATE

Thank you for the opportunity to present the Administration's view on the privatization of INTELSAT and on your proposed legislation, S. 376, the "Open-market Reorganization for the Betterment of International Telecommunications Act." The international satellite services industry is increasingly important. Privatization and demonopolization of national telecom operators around the world, combined with the Administration's successful conclusion in 1997 of the WTO agreement on basic telecommunications services, mean that new markets are opening up at an unprecedented rate. And because of recent strides in technology, satellites now offer cost-effective global links for direct-to-home digital TV, advanced data services, Internet access and hand-held wireless phones usable anywhere in the world, in addition to traditional telephone calls and television feeds. Privatization of INTELSAT, properly carried out, will contribute significantly to the dynamism of this exciting industry, benefiting satellite services users, providers and investors in the United States and throughout the world.

The Administration, in partnership with the Congress, has worked tirelessly for more than five years to bring about the restructuring and privatization of the intergovernmental satellite organizations (ISOs), INTELSAT and Inmarsat. These efforts have borne fruit. Four years ago, Inmarsat's members spun off a significant portion of its growth business into a commercial stock corporation, ICO Global Communica-

tions Ltd., in which Hughes and TRW (as well as Comsat) have substantial investments. In March 1998, INTELSAT's member governments agree to spin off growth business segments of that organization into a new company, New Skies Satellites, N.V., with plans for public trading of shares by the end of 1999. Like ICO, New Skies has no intergovernmental status nor any privileges and immunities, and it is subject to the laws of the jurisdictions in which it will do business, including the United States. The Administration negotiated competition-safeguard provisions as part of these multilateral actions. These two spinoffs were important first steps in the ongoing transition of Inmarsat and INTELSAT to commercial status. Significantly, they have demonstrated to the member countries, especially those reluctant to undertake these steps, that private entities in an open market *will* compete to meet their telecommunications needs.

As a result, full privatization of the ISOs is now in sight. Next month, Inmarsat will complete the privatization of its remaining business operations. INTELSAT's Director General has stated unequivocally his commitment to achieve privatization by 2001, and discussions within the INTELSAT Board of Governors on privatization are progressing favorably. The United States will continue to play a leadership role within the international community, to get a pro-competitive transition plan and an aggressive timetable for full privatization of INTELSAT.

At this time, the Administration does not believe any legislation is necessary to ensure that the privatization of INTELSAT and Inmarsat does not harm competition in the U.S. market (although legislation is necessary for other purposes, as discussed below). The Federal Communications Commission (FCC) and the Antitrust Division of the Department of Justice have ample authority to protect U.S. interests, and the Administration has been aggressive in ensuring that plans to restructure and privatize the ISOs are pro-competitive.

To elaborate, prior to supporting the ISO decisions to create New Skies and to privatize Inmarsat, the Administration conducted a rigorous process to ensure that competition would be helped, not harmed, by these changes. This process included: extensive outreach to U.S. industry to identify issues of concern; substantive review of restructuring/privatization plans and documents by authorities from the FCC and the Antitrust Division, among other agencies; and lengthy negotiations with the ISO member governments and competition authorities from the European Union and Canada to establish the appropriate competition safeguards. Our competition authorities were satisfied that the final restructuring/privatization plans represented an improvement over the status quo in terms of competition. Had they not been, the United States would have "disassociated" from the ISO decisions and taken the necessary steps to block access to our market. Moreover, the FCC retains the authority to block such access if these plans are implemented in a way that it believes would harm U.S. competition.

In sum, the Administration has made clear its commitment to ensure that INTELSAT and Inmarsat privatizations do not harm U.S. competition, and our competition authorities have ample opportunity under existing law to do that. Nevertheless, we recognize that Congress was instrumental in establishing INTELSAT and Inmarsat and that it may want to address ISO privatization in legislation. If so, the Administration believes that such legislation should reflect three key principles:

First, Congress should be careful not to limit access by INTELSAT to the U.S. market in a way the harms American consumers—particularly in the fast-growing areas of high-speed data transmission, Internet access and video. Thus, legislation should avoid requiring INTELSAT to meet a fixed deadline or conditions for privatization that are infeasible or unrealistic. Two key attributes of the international satellite services industry make INTELSAT access to our market a major concern. First, the industry is dominated by a small number of relatively large providers—one of them INTELSAT—and the industry is likely to remain concentrated, because fixed costs are very high and there are significant economies of scale. Thus, restrictions on INTELSAT's access to the U.S. market could significantly reduce competition. Second, U.S. consumers account for nearly half of all consumption of global satellite services, and consumption is forecast to nearly *triple* in the next few years. Thus, U.S. consumers would be hurt disproportionately by restrictions on INTELSAT or any other major services provider.

Principle two is that privatization must create a level playing field between INTELSAT and its commercial competitors, both U.S. and foreign. This means that the privatized INTELSAT should:

- be located in a jurisdiction with effective competition laws and regulatory oversight and that has made open-market satellite commitments under the WTO agreement on basic telecommunications;

- not retain any privilege, immunity or other regulatory advantage resulting from its former intergovernmental status or that is not readily or meaningfully available to other satellite competitors;
- compete free of relationships of ownership or control with former signatories that confer a competitive advantage in providing new services or that provide an incentive for any purchaser of the privatized INTELSAT's services to discriminate anti-competitively in its favor;
- move rapidly toward public trading of shares on internationally traded stock exchanges; and
- obtain no unfair advantage from "warehoused" orbital slots obtained during its operation as an intergovernmental organization.

The third principle is that any legislation must be consistent with the United States' international obligations, including the Fourth Protocol to the World Trade organization General Agreement on Trade in Services (the WTO basic telecommunications services agreement). In addition to raising possible WTO questions, legislation that is seen as a means of favoring U.S. satellite services firms may provoke retaliation from U.S. trading partners and undermine U.S. efforts to accelerate the privatization of INTELSAT. At present, the FCC, in consultation with the Executive Branch, has the flexibility to issue or condition a license in a manner that is consistent with U.S. international obligations; that flexibility should be retained.

S. 376

The Administration strongly supports the objective of S. 376 to promote competition in domestic and international satellite communications services by encouraging the full privatization of INTELSAT and reforming the framework for regulating Comsat. Moreover, we are pleased that the bill includes provisions to allow the United States to maintain membership in the residual Inmarsat intergovernmental organization following privatization of Inmarsat's business operations next month. The Administration requested these provisions to protect the interests of U.S. maritime users, particularly the Coast Guard, in residual intergovernmental organization, which will oversee the global maritime distress and safety system. Finally, without expressing any view on the proposed acquisition of Comsat by Lockheed Martin, which the Justice Department is still reviewing, we believe the provision to lift the cap on individual ownership of Comsat is desirable. The cap was put in place to ensure Comsat's independence, particularly from the U.S. long-distance and international telecom monopolies, at a time when the nascent satellite services industry was itself considered a natural monopoly. However, the U.S. no longer has long-distance and international telecom monopolies, and the satellite services industry now has competition as well.

Although we believe S. 376 is a very positive contribution to the debate over ISO privatization, we would like to see several provisions in S. 376 modified or eliminated, in keeping with the three principles described above:

- Sec. 603(b) prohibits the FCC from authorizing INTELSAT to provide certain services (DTH, DBS, DAR and Ka-Band) in the U.S. market prior to privatization. This section should be eliminated. INTELSAT is unlikely to offer any of these services in the U.S. prior to privatization; hence this section would have little practical effect. Nevertheless, in principle, we oppose inflexible statutory service restrictions, because they would limit competition and resulting choices for U.S. consumers, as discussed above.
- Sec. 613 requires the President, following the decision by INTELSAT's members to privatize, to certify that the privatization is pro-competitive and will not distort competition in the U.S. market. This provision is unnecessary. As noted above, the Administration will follow a rigorous review process to ensure that INTELSAT's privatization plan is pro-competitive *before* the United States agrees to support it within INTELSAT, and the FCC and Justice's Antitrust Division have ample opportunity to review the implementation of this plan. At a minimum, the provision should be modified so as to require that the certification process take place prior to INTELSAT's transition to a private structure.
- Sec. 614 requires that the FCC be bound by the President's certification under Sec. 613. This section should be modified to clarify that it would in no way reduce existing FCC authority.
- Since INTELSAT's beginning, Comsat has served in the congressionally chartered role of U.S. Signatory, subject to the "instructional authority" of the U.S. Government. The bill should explicitly continue this authority for as long as INTELSAT remains an intergovernmental organization and Comsat remains the U.S. Signatory.

Direct Access. Sec 603(a) effectively would prohibit direct access to INTELSAT by its U.S. customers. Although direct access is a highly controversial issue in the debate over INTELSAT privatization, the rhetoric on both sides may well be inflated. Direct access to INTELSAT, broadly speaking, is a pro-competitive policy that has been implemented in 90+ countries to the benefit of consumers. However, direct access in this country, at this time, probably will produce only modest benefits for U.S. consumers of satellite services. But if the benefits will not be significant, neither will the harm to Comsat, at least if direct access is properly implemented. Two possible effects of direct access—on competition and resulting economic efficiency an on the privatization process—merit discussion.

Direct access to INTELSAT, properly implemented, probably would yield only modest benefits to U.S. users through greater competition and efficiency. First, unlike most INTELSAT signatories at the time that direct access was adopted in their home markets, Comsat is not a vertically integrated telecom monopoly. To elaborate, many foreign countries adopted direct access as part of structural reforms to reduce the power of monopoly telecom providers that were also signatories to INTELSAT. But because Comsat's sole function is to sell INTELSAT space segment, the ability to bypass Comsat through direct access is far less significant. Second, benefits to U.S. users from direct access will be limited because INTELSAT privatization is in sight. Once INTELSAT becomes a private provider, any user should be able to access it directly, and the issue will be moot.

"Proper implementation" of direct access refers to two things. First, it should not include a policy of "fresh look," which would allow Comsat customers to renegotiate their contracts. The contracts were negotiated by private parties in an environment that offered some competitive alternatives. Moreover, Comsat has made long-term commitments to INTELSAT based on the contracts. It would be inappropriate for the federal government to overturn such contracts.

Second, Comsat should be reimbursed for its true costs of providing INTELSAT services. Although the INTELSAT utilization charge (IUC) is often thought to be the wholesale cost of providing INTELSAT services, it is actually an internal accounting convention that excludes some of Comsat's legitimate costs. If Comsat customers and direct access users (some of whom compete with Comsat) paid only the IUC under a direct access regime, the implicit subsidy from Comsat to these customers/direct access users would distort competition.

In addition to competition/efficiency effects, a second broad consideration is the effect of direct access on INTELSAT privatization. Parts of the executive branch have in the past expressed concern that allowing direct access would remove a significant incentive for certain signatories to support privatization, because they could bypass Comsat and deal directly with U.S. customers without first privatizing. And, in fact, several signatories have expressed the view that if they got direct access to the U.S. market, privatization might be less urgent. However, the momentum for privatization is growing and the potential savings to users from bypassing Comsat are modest, as noted above. Thus we believe the overall risk to privatization is small.

Senator BURNS. Thank you very much, Ms. McCann.

We have been joined now by one of the cosponsors on the bill, Senator Rockefeller. If you have a statement, before we hear from Mr. Porter, we would certainly welcome it at this time.

STATEMENT OF HON. JOHN D. ROCKEFELLER IV, U.S. SENATOR FROM WEST VIRGINIA

Senator ROCKEFELLER. It is so brief, and you will be so pleased. I will submit my full statement.

Senator BURNS. How do we define "brief"? [Laughter.]

Senator ROCKEFELLER. My statement that I will submit my full statement, with your permission.

Senator BURNS. Wonderful. Without objection.

Senator ROCKEFELLER. Thank you.

Obviously, I thank Senator Burns very much for this. He has been a driving force on it. I am a cosponsor of the bill. There are, I think, 11 of us on the committee who are. I believe that it is in the consumer interest to have a private INTELSAT. I come from a State where 4 percent of the land, Senator Burns, if you can

imagine this, is flat, and 96 percent is not. It is up and down. I really think that the whole concept of satellite services is the way that West Virginia, essentially, and States like that, of which there are many—or parts of States—that is where their future is, because of mountainous terrain and the high cost of providing traditional telecommunications services.

INTELSAT has a history of serving all parts of the world. They appear to have done so at reasonable prices. We have an interest in making sure that all parts of the world are part of the global information structure. That is one of the advantages of something that is floating around in the sky. Whether it is high or low, it serves a lot more area. This bill will allow a privatized INTELSAT to continue to serve these areas and still survive in the face of competition with other countries.

I am going to continue to work on this bill with, obviously, our chairman and Senator Hollings and Senator Breaux. It is a good bill, and I am proud to be a part of it.

Now, was that satisfactory?

[The prepared statement of Senator Rockefeller follows:]

PREPARED STATEMENT OF HON. JOHN D. ROCKEFELLER IV,
U.S. SENATOR FROM WEST VIRGINIA

First I want to thank Mr. Burns for holding this important hearing. International satellite reform is critical to consumers across the United States.

Yesterday I agreed to become a cosponsor of this bill—along with Mr. Burns, McCain, Bryan, Brownback, Cleland, Frist and Dorgan. I support Mr. Burns' bill because I believe that it is in the consumer interest to have a private INTELSAT. Such a competitive entity will lead to lower prices, better service, and more efficiency across the globe.

Additionally, removing ownership restrictions on COMSAT will help to bring new services to American consumers. I believe that broadband satellite services will a very important role in West Virginia's future, and this bill will lead to further deployment of these services by lifting the ownership restriction on COMCAST. I am excited by the possibility of a new competitor in domestic satellite services, and the resulting advances in these satellite services. Our mountainous terrain and the high cost of providing traditional telecommunications services make satellite services particularly important to West Virginia.

Furthermore, INTELSAT has a history of serving all parts of the world at reasonable prices. We have an interest in making sure that developing nations are part of the global information infrastructure. I will work to make sure that this bill will allow a privatized INTELSAT to continue to serve these areas at reasonable prices.

I must state, however, that while I support this bill, we are still in the middle of the legislative process. I am eager to continue working with Mr. Hollings, Breaux, and other Senators who are working important ideas with great promise. I want to stress that while I agree that this bill is the right platform for international satellite reform, I intend to keep working hard on this issue.

Senator BURNS. Wonderful. Thank you, Senator Rockefeller. I appreciate your cosponsorship. We have had a good working relationship for a long time. We have served on different committees, and it is always a pleasure to work with you and your staff. So, we appreciate that very much.

Mr. Porter, I am looking forward to your statement. Thank you for coming today.

STATEMENT OF RODERICK KELVIN PORTER, ACTING CHIEF, INTERNATIONAL BUREAU, FEDERAL COMMUNICATIONS COMMISSION

Mr. PORTER. Thank you, Mr. Chairman, Senator Rockefeller. I am pleased to have the opportunity to appear before you today.

We support new legislation to articulate a national satellite policy based on pro-competitive principles. We agree with principles upon which legislation should be based, as jointly stated by yourself and Chairman Bliley. The ultimate goal of satellite reform legislation will be to benefit consumers through the encouragement of a truly competitive market. Privatization of INTELSAT and INMARSAT would help promote competition in the commercial satellite communications market, and thereby benefit the consumer.

Thirty-seven years ago, Congress adopted the Communications Satellite Act of 1962. It was well-conceived, and tailored to the times. It established a policy that led to the creation of INTELSAT and INMARSAT. INTELSAT was created with the goal of developing a satellite system that would provide global connectivity. INMARSAT was formed for the purpose of improving maritime commercial and safety communications.

The landscape of the communications satellite industry has changed markedly over the past 37 years. The international satellite organizations are faced with competition from private companies through satellite, submarine fiber optic cables and other technologies. U.S. policy since the mid-1980's focused on promoting this competition as a means of expanding customer choice and achieving lower rates.

The 1962 Satellite Act, however, has undergone little change during these developments. INTELSAT and INMARSAT have been concerned that their current intergovernmental structure, entailing unlimited liability for investors and a slow decisionmaking process, inhibits their ability to respond to competition. Competitors are concerned about the potential for competitive harm from INTELSAT's and INMARSAT's global access to markets, special privileges and immunities, and control over substantial satellite capacity and choice orbital spectrum.

Competitors also are concerned that some investors in the intergovernmental organizations may be able to restrict overseas market access for new entrants. Both INTELSAT and INMARSAT have been taking steps to restructure themselves in response to competitive pressures. INMARSAT created a private affiliate to provide hand-held mobile satellite services in 1995. It will itself privatize on or about April 15 of this year.

INTELSAT created a private affiliate last year to provide video and multimedia services. INTELSAT now is considering additional restructuring options, including privatization.

The United States has been a strong proponent of privatization of the intergovernmental organizations, both to improve their competitiveness and to eliminate the potential for market distortion that flows from their intergovernmental status. The issue is not the goal of privatization, but, rather, how to achieve it.

We recognize that even though privatization of INTELSAT will be the result of international negotiation, Congress has an active and independent role in the process. In fact, it was congressional

leadership in the 1960's, and U.S. policy established by the 1962 Act, that led to the creation of INTELSAT.

Congress is in the position to have the same degree of influence in the 1990's for INTELSAT's transformation into a true market player. Satellite reform legislation would be an appropriate means to establish policy guidelines for U.S. efforts to privatize INTELSAT. Legislation also could provide an opportunity to immediately eliminate provisions of the 1962 Act no longer necessary or relevant to achieving a pro-competitive privatization of INTELSAT.

The Commission has taken important actions in the last 3 years to deregulate COMSAT in view of changing market conditions resulting from competition. Upon privatization, the overlay of government oversight of COMSAT that exists as a result of COMSAT's special role in INTELSAT and INMARSAT should be eliminated.

My prepared statement contains specific comments on provisions of S. 376. Mr. Chairman, we commend you and members of the subcommittee in moving forward with satellite reform legislation, and look forward to working with you on this important initiative. Thank you.

[The prepared statement of Mr. Porter follows:]

PREPARED STATEMENT OF RODERICK KELVIN PORTER, ACTING CHIEF, INTERNATIONAL BUREAU, FEDERAL COMMUNICATIONS COMMISSION

EXECUTIVE SUMMARY

Thirty-seven years ago, Congress adopted the Communications Satellite Act of 1962. It was well conceived and it was tailored to the times. It established a policy that led to the creation of INTELSAT and Inmarsat. INTELSAT was created with the goal of developing a satellite system that would provide global connectivity, and Inmarsat was formed for the purpose of improving maritime communications and communications for the safety of life at sea.

The landscape of the communications satellite industry has changed markedly over the past 37 years. The international satellite organizations are faced with competition from private companies through both satellite and submarine fiber optic cables. U.S. policy since the mid-1980's has focused on promoting this competition as a means of expanding customer choice and achieving lower rates. The 1962 Satellite Act, however, has undergone little change during this period of change in the industry.

INTELSAT and Inmarsat have been concerned that their current intergovernmental structure entailing unlimited liability for investors and a slow decision-making process inhibit their ability to respond to competition. Competitors are concerned about potential anticompetitive conduct by INTELSAT and Inmarsat, and have focussed particularly on INTELSAT's and Inmarsat's global access to markets, special privileges and immunities, control over significant satellite capacity and orbital locations, and the potential for some investors in these intergovernmental organizations to restrict overseas market access for new entrants.

Both INTELSAT and Inmarsat have been taking steps to restructure themselves in response to competitive pressures. In 1995, Inmarsat created a private affiliate to provide hand-held services and plans to privatize itself on or about April 15 of this year. Last year, INTELSAT created a private affiliate, New Skies, to provide video and multi-media services. INTELSAT now is considering additional restructuring options, including privatization.

We agree that the ultimate goal of legislation and regulation in satellite communications is to benefit consumers through the encouragement of a truly competitive market. We support Congress's determination that the time is ripe for reform of the statutes that govern the rapidly changing satellite communications market. Privatization of INTELSAT and Inmarsat would help promote competition in the commercial satellite communications market, and thereby benefit consumers.

The United States has been a strong proponent of privatization of the intergovernmental organizations—both to improve their competitiveness and to eliminate the potential for market distortion that flows from their intergovernmental status. INTELSAT must be privatized in a way that allows it to remain viable in the world

market while preserving our commitment to global satellite connectivity. At the same time, however, we need to ensure that its legacy as an intergovernmental organization does not impede the ability of private competitors to enter the market.

We recognize that, even though privatization of INTELSAT will be the result of international negotiation, Congress has an independent and active role in the process. In fact, it was Congressional leadership in the 1960s and U.S. policy established by the 1962 Act that lead to the creation of INTELSAT. Congress is in the position to have the same degree of influence in the 1990s for INTELSAT's transformation into a true market player.

We support legislation to articulate a national satellite policy based on pro-competitive principles. We agree with the principles jointly stated by Chairman Burns and Chairman Bliley in their letter to Chairman Kennard. In keeping with these principles, we believe that legislative criteria for privatization of INTELSAT might usefully entail: (1) conversion to a publicly held corporation listed and traded on public exchange; (2) opportunity for participation in the private company by entities other than current signatories; (3) elimination of all privileges and immunities; (4) location in a jurisdiction with effective competition laws and regulatory oversight; (5) availability of non-exclusive access and distribution arrangements that serve customer needs; and (6) continued provision of services to developing countries by INTELSAT.

We also support satellite reform legislation that would eliminate those provisions of the 1962 Act that are no longer necessary or relevant to achieving a pro-competitive privatization of those organizations. Comsat ultimately should evolve into a company with no special Congressional charter or privileges or obligations. The Commission has taken several important actions in the last three years to deregulate Comsat in an effort to help it achieve a market position that is no more hindered or protected by regulation than that of its competitors. The overlay of government oversight of Comsat that exists as a result of Comsat's special role in INTELSAT and Inmarsat should be eliminated upon privatization.

S. 376 is designed to achieve these goals. Moving forward with legislation of this nature would both be timely and helpful to U.S. efforts to promote a robust and competitive satellite communications market globally. We look forward to working with you on these critical issues.

Mr. Chairman and members of the Subcommittee, thank you for giving me an opportunity to appear before you today to discuss the Open-market Reorganization for the Betterment of International Telecommunications Act (S. 376). We agree that the ultimate goal of legislation and regulation in satellite communications is to benefit consumers through the encouragement of a truly competitive market. We will take all steps necessary in support of Congress's determination that the time is ripe for reform of the statutes that govern the rapidly changing satellite communications market. Privatization of INTELSAT and Inmarsat would help promote competition in the commercial satellite communications market, and thereby benefit consumers. Achieving privatization is and will continue to be both challenging and promising. It is challenging because other countries that are members of these international organizations must be convinced that a solution that promotes competition is in their interests. It is promising because successful privatization of these organizations may bring new market opportunities for satellite service providers throughout the world and increased choice for consumers here at home.

Legislation that both establishes U.S. policy on privatization of INTELSAT and Inmarsat and promotes further competition in the commercial satellite market is both timely and appropriate. We appreciate the opportunity to work with you to reform the U.S. legislative framework governing satellite services and to implement pro-competitive and deregulatory measures.

THE COMMUNICATIONS SATELLITE ACT OF 1962

The Communications Satellite Act of 1962 was written when the primary goal of U.S. satellite policy was the successful deployment of a global satellite system that would provide world-wide telephone connectivity and video coverage. To a large degree, the 1962 Satellite Act assumed the existence of economies of scale calling for establishment of a single global satellite system. The Act created Comsat as a publicly-traded private corporation to achieve this goal by developing and investing in the INTELSAT system. At the same time, Congress established extensive government oversight of Comsat. In 1979, Congress expanded Comsat's role, making it the U.S. investor in Inmarsat. Today, Comsat is traded on three U.S. exchanges, with 1998 revenues of more than a half billion dollars. The company has restructured itself to focus its business on international satellite and digital networking services. The challenge for COMSAT will be to adapt to the fundamental changes that are

taking place in INTELSAT and Inmarsat as a result of competitive challenges to those organizations.

DEREGULATION OF COMSAT

The goal of a competitive market that benefits consumers is furthered by the existence of a level playing field. Thus, the Commission has taken several important actions in the last three years to deregulate Comsat in an effort to help it achieve a market position that is no more hindered or protected by regulation than that of its competitors. In 1996, the Commission waived its dominant carrier tariffing rules and permitted Comsat to file tariffs for switched voice and private line service with 14 days notice and without cost support. In 1997, the Commission waived its dominant carrier tariffing rules and permitted Comsat, as do its competitors, to file tariffs for full time video and occasional use video on a streamlined basis.

The Commission granted Comsat significant additional regulatory relief in 1998. Specifically, the Commission found Comsat non-dominant in the provision of switched voice, private line, and occasional use video in competitive markets, and in the provision of full time video and earth station services in all geographic markets. Together, these markets account for over 92% of Comsat's INTELSAT revenues. The Commission also found, however, that Comsat is still dominant in the provision of switched voice, private line, and occasional use video service in non-competitive geographic markets. Most recently, in February of this year, the Commission established an incentive based form of regulation in lieu of burdensome rate of return regulation for service in which Comsat remains dominant. In addition to these actions, the Commission has eliminated requirements for Comsat to (1) obtain FCC approval to invest in INTELSAT satellites; and (2) file certain yearly reports to the FCC normally required of rate regulated carriers.

INTELSAT AND INMARSAT

The U.S. effort in creating the global satellite system envisioned by the 1962 Satellite Act was a complete success. Today, INTELSAT has 143 members and operates a fleet of 19 satellites accessed by thousands of earth stations. INTELSAT provides services to hundreds of customers in over 200 countries. INTELSAT has revenues of approximately $1 billion and it has assets worth over $3 billion. The connectivity provided by the INTELSAT system makes possible the delivery of voice, data, and video communications anywhere on the globe.

Based on the INTELSAT Intergovernmental Organization (IGO) model, Inmarsat was established as an IGO in 1979 to improve maritime communications, particularly communications for distress and safety of life at sea. Inmarsat has 84 members and operates eight satellites providing global maritime, aeronautical, and land mobile communications. More than 140,000 terminals of various types are in use. Inmarsat revenues for 1999 are projected to be about $450 million.

INTELSAT and Inmarsat own and operate satellites and the associated facilities while signatories and other entities own and operate ground facilities accessing the satellites. Each IGO is made up of parties and signatories. Parties represent governments' interest in the organization through the Assembly of Parties that meets biannually. Signatories are the investors in the satellite system. Some signatories are private entities, but many are wholly or partially owned by foreign governments. Investment is tied to the amount of traffic a signatory carries over the system. The largest signatories are represented on the INTELSAT Board of Governors and the Inmarsat Council. These bodies make the major commercial decisions for each organization. It is important to note that each signatory represents its own interests and does not have a fiduciary obligation to the entire organization. Comsat is the U.S. signatory to both INTELSAT and Inmarsat.

In 1962, when INTELSAT was formed, the world's telecommunications infrastructure was quite different than it is today. In the early days, most private entities considered the use of satellites for telecommunications services to be very risky and expensive. Advances in technology as well as increased satellite capacity have made it feasible for new entities to enter the global telecommunications market. INTELSAT now faces competition from private systems. Since 1962, application of satellite technology to communications has resulted in new and varied options to consumers and has become the province of private companies competing to satisfy consumer needs. United States policy evolved in the 1980's to introduce competition to INTELSAT. The authorization of competing U.S. systems required a presidential determination that such competition was, under the 1962 Satellite Act, in the national interest. Following that determination, the FCC began the licensing process for competing U.S. systems. Today, private industry provides satellite services for telephony, direct-to-home television, other video and data services as well as mari-

time, aeronautical and land-mobile services. In the near future private companies will introduce services such as broadband internet, expanded video services and hand-held global mobile communications. In the broadband video market and mobile satellite services markets private companies plan to invest billions just to start operations.

Growth in global telecommunications has not been limited to satellite-delivered services. Over the last decade the capacity of transoceanic fiber optic cables has dramatically increased. Consequently, INTELSAT's share of the market for international telephone service has fallen. Although public switched telephony is still its largest revenue source, the percentage of INTELSAT's revenue stream from public switched service has fallen and the revenues from certain new services are growing. Today, close to half of INTELSAT's total revenues are derived from public switched telephone service, down from 76 percent in 1988. In addition, INTELSAT's share of the public switched service market is expected to continue to decline largely due to competition from fiber optic undersea cables. In response to the changing market, INTELSAT has expanded into new areas, including the market for broadcast video where it faces competition from new satellite-based companies.

INTELSAT has taken steps to react to the changing marketplace and the advent of competition. Last year, it created New Skies Satellite, N.V., a private commercial affiliate Netherlands company, to provide video and multimedia services on a global basis. New Skies is now operating as a wholly-owned affiliate of INTELSAT and INTELSAT's signatories. Five satellites have been transferred from INTELSAT to New Skies and a sixth satellite is scheduled to be launched this year. Over 90 earth stations in the United States currently are operating with New Skies on a special temporary authority basis pending Commission consideration of their applications for permanent authority to operate with New Skies.

INTELSAT itself recognizes the need to become a more efficient organization and is considering restructuring options, including privatization. Privatization will lead to operational flexibility, speedier decision-making by a management responsive to a fiduciary board of directors, limited liability by investors, and better access to capital through public and strategic investors

Unlike INTELSAT, Inmarsat's revenue stream has maintained itself steadily over the years without significant change. Competition for Inmarsat, however, is starting to develop. Inmarsat now competes with private consortia largely composed of U.S. firms such as Motorola, Loral and American Mobile Satellite Corporation. In anticipation of the development of competition, Inmarsat has undertaken efforts to restructure its operations. In January 1995, Inmarsat created an affiliated private company, ICO Global Communications Ltd., to provide global mobile hand-held communications services. Inmarsat will privatize on or about April 15 of this year. Inmarsat's decision to privatize was based on the recognition that the organization could not effectively compete with private systems under an intergovernmental structure that conferred unlimited liability on its investors and involved an inefficient decision-making mechanism slow to react to competitive challenges.

Under the privatization, Inmarsat will transfer its assets (satellites, associated facilities, headquarters building, etc.) to a newly created private company incorporated in the United Kingdom. Existing Inmarsat signatories will be allowed shares in the corporation in proportion to their investment shares in Inmarsat. The newly created company will own and operate the satellites previously owned and operated by Inmarsat and will provide existing commercial and safety services. It will not have the privileges and immunities bestowed on the current intergovernmental organization. Current Inmarsat contracts will be novated to the corporation. Existing land earth station operators will distribute the services of the corporation pursuant to a Land Earth Station (LES) Operator Agreement with the company. The newly created company will retain the name "Inmarsat". An Initial Public Offering (IPO) is anticipated within two years. A residual intergovernmental organization consisting of a small directorate will be created to ensure that the new company continues to provide GMDSS (Global Maritime Distress and Safety Services) under a Public Services Agreement with the IGO. The IGO will not have any control over the operations or facilities of the new Inmarsat. Instead the IGO will have an agreement with the new Inmarsat whereby the IGO will have the ability to ensure that Inmarsat meets its obligations to provide GMDSS.

CONSIDERATIONS FOR A NEW LEGISLATIVE FRAMEWORK

The Communications Satellite Act of 1962 was enacted to achieve a goal long since accomplished. The focus of U.S. policy has been, since the mid-1980's, the development of competition. The Communications Satellite Act, however, has under-

gone little change. We believe that new legislation could seize on a present opportunity to articulate current U.S. national policy based on pro-competitive principles.

We believe that privatization will help promote greater competition in the satellite communications market and will make INTELSAT a more effective competitor. INTELSAT's current and potential competitors are concerned about their ability to compete with INTELSAT due to INTELSAT's global access to markets, control over significant satellite capacity, and special privileges and immunities as well as the potential ability of some signatories to keep competitors out of their home markets. In the countries that have not yet privatized their communications systems, the government and the telecom provider acting as signatory are the same entity. As a result, some INTELSAT signatories may be in a position to affect their government's market access decisions, and could impede entry by competitors of INTELSAT.

Significant steps were taken in 1997 to address the market access question. The World Trade Organization (WTO) Agreement on Basic Telecommunication Services provides for commitments by 72 countries to open their markets for basic telecommunications services, and 49 of these countries have made commitments for satellite services. In addition, 55 of the parties to the WTO agreement also signed the Reference Paper on Pro-Competitive Regulatory Principles. The Reference Paper contains a binding set of competition rules and calls for separation of a country's telecommunications regulator from its national telecommunications service provider. Many INTELSAT members, however, have not made WTO commitments. Privatization eliminating INTELSAT's intergovernmental imprimatur and permitting diverse ownership in the privatized organization would be an effective means of further promoting greater market access.

We recognize that even though privatization of INTELSAT will be the result of international negotiation, Congress has an independent and active role in the process. In fact, it was Congressional leadership in the 1960s and U.S. policy established by the 1962 Act that lead to the creation of INTELSAT. Congress is in the position to have the same degree of influence in the 1990s for INTELSAT's transformation into a true market player.

We agree that Satellite reform legislation is an appropriate tool by which to establish policy guidelines for U.S. efforts to privatize INTELSAT. Legislation also provides the opportunity to eliminate provisions of the 1962 Satellite Act no longer necessary or relevant to achieving a pro-competitive privatization. Upon INTELSAT's privatization, all remaining provisions of the 1962 legislation could then be eliminated. Comsat would then evolve into a company with no special Congressional charter or privileges or obligations. The overlay of government oversight and regulation of Comsat that exists as a result of Comsat's special role in INTELSAT and Inmarsat would be eliminated upon privatization.

In a letter to Chairman Kennard, Chairman Burns and Chairman Bliley stated the following principles upon which to base legislation: (1) privatizing INTELSAT by a date certain; (2) enabling the United States to participate in a restructured Inmarsat through legislation; (3) a pro-competitive privatization of INTELSAT and Inmarsat, eliminating IGO and Comsat's derivative privileges and immunities and their potential ability to possibly warehouse orbital locations; (4) non-discriminatory competition; (5) use of market access as an incentive for a pro-competitive privatization; and (6) elimination of ownership restrictions on Comsat and other deregulation ending the role of the U.S. government in commercial satellite operations. These principles support our stated policy objectives and we agree that satellite reform legislation based on these principles would establish a clear policy framework for pursuit of pro-competitive privatization of INTELSAT that will result in benefits for U.S. consumers.

In keeping with these principles, we believe that legislative criteria for privatization of INTELSAT might usefully entail: (1) conversion to a publicly held corporation listed and traded on public exchanges; (2) opportunity for ownership and participation in the private company by entities other than current signatories; (3) elimination of all privileges and immunities; (4) location in a jurisdiction with effective competition laws and regulatory oversight; (5) availability of non-exclusive access and distribution arrangements that serve customer needs; and (6) continued provision of services to developing countries by INTELSAT. S. 376 is designed to achieve these goals. Moving forward with legislation of this nature would both be timely and helpful to U.S. efforts to privatize INTELSAT. In that spirit we suggest several comments for the Subcommittee's consideration on certain provisions of the bill.

Legislation has the potential to provide effective incentives for INTELSAT to privatize in a pro-competitive manner. The availability of the U.S. market certainly would create such an incentive. We note, however, that S. 376 would determine the availability of the U.S. market to INTELSAT through a Presidential certification

process that apparently would be undertaken prior to completion of negotiation of the details of the privatization. The bill provides for a Presidential certification that entry by a privatized INTELSAT into the U.S. market will not harm competition to be made upon an INTELSAT Assembly of Parties decision creating the "legal structure and characteristics" of a privatized INTELSAT. The FCC would be bound by this determination in its licensing process. It has been our experience in recent negotiations involving the Inmarsat privatization and the creation of New Skies by INTELSAT that Assembly decisions on legal structure and characteristics are made with negotiations on important details and documents on implementation yet to be completed. Typically, these details and documents have been finalized by later meetings of the INTELSAT Board of Governors or Inmarsat Council.[1] Thus, under S. 376, a Presidential certification binding the FCC would be made absent the availability of the final details of the privatization.

We recommend that the Subcommittee consider preserving the independent regulatory review of the effects on competition by a privatized INTELSAT's entry into the U.S. market in any legislation. Presidential certification as to the outcome of Assembly of Parties decisions would then be based on a national interest standard and other traditional Executive branch standards.[2] Subsequent Commission action through the licensing process would involve consideration of the full results of the privatization based on a public record with accountability to the courts. It would provide a means of maintaining U.S. leverage in the final stages of the negotiating process and assuring that the principles that the United States agreed to at the Assembly have been achieved through implementation.[3]

This approach also would continue the distinction the Commission has drawn between WTO-covered and non-covered satellite services in establishing a licensing policy to implement the WTO Agreement.[4]

S. 376 identifies two means by which the availability of the U.S. market would be used as incentives for a pro-competitive privatization of INTELSAT: (1) withholding the availability of direct access in the United States; and (2) prohibiting INTELSAT's provision of Ka-band, DTH, DBS and DARS. INTELSAT does not currently provide Ka-band, DTH, DBS and DARS services, but has been considering

---

[1] *See* Report of the Twelfth Session of the Inmarsat Assembly of Parties, Assembly/12/Report (May 1998). *See* also Assembly/13 Report (October 8 (1998). The Inmarsat Assembly of Parties determined to decide upon the legal structure and characteristics of Inmarsat's privatization, but left final decision on the details and documents associated with the privatization to subsequent meetings of the Inmarsat Council held over a five month period. Most implementation documents were in draft stages when the Assembly made its decision to privatize. Similarly, a number of documents implementing the creation of New Skies were finalized by the INTELSAT Board of Governors after the INTELSAT Assembly decided to create New Skies. Certain key documents underwent extensive changes and are subject to Commission review in connection with applications before it to operate New Skies in the United States.

[2] There is precedent for action on a satellite policy issue whereby there is first a Presidential determination based on national interest considerations and then, following that, FCC licensing actions based on the Commission's public interest standard that implemented the policy determination. In 1983, the Commission received several applications to operate separate satellite systems in competition with INTELSAT. The Commission withheld action on the applications at request of the Executive branch pending a decision under Section 102(d) of the 1962 Satellite Act that competing systems were in the national interest. The President made this determination in 1984. Presidential Determination No. 85–2 of November 28, 1984 49 Fed. Reg. 46937 (November 30, 1984). The Commission conducted a rulemaking and issued conditional licenses in 1985. *See* Permissible Services of U.S. Systems Separate from the International Telecommunications Satellite Organization (INTELSAT). 101 FCC 2d 1046 (1985); On recon, 61 RR 649 (1986); further recon, 1 FCC Rcd 439 (1986). In establishing a regulatory framework for considering applications for competing systems, the Commission considered competition and related issues in connection with the applications.

[3] The Executive branch has previously asked the Commission to utilize its licensing process to assure that results of negotiations in connection with Inmarsat's creation of ICO Communications were in fact properly implemented. *See* Comsat Authority to Participate in Procurement of the Facilities of the ICO Global Communications System; FCC 99–21 (released February 25, 1999). In testimony before this subcommittee last September, the Administration stated that any legislation should "recognize and incorporate the existing flexible authority of the FCC and the Department of Justice to protect competition and promote the public interest in the rapidly changing telecommunications market".

[4] The United States excluded from its scheduled WTO coverage one-way satellite transmission of DTH, DBS, and DARS, and submitted an MFN exception for those services. Communication from the United States, *List of Article II (MFN) Exemptions.* The FCC decided to apply an "effective competitive opportunities" test to applications to provide these services through all foreign satellite systems, whether or not they are systems of WTO Members. Non-U.S. Licensed Satellites providing Domestic and International Service in the United States, 12 FCC Rcd 24094, 24146 (1997) (*DISCO II Order*). S.376 would have the effect of exempting a privatized INTELSAT from this test.

doing so with the U.S. market potentially playing a role in business plans. INTELSAT already provides through Comsat a variety of C-band and Ku-band services in the United States. These services are available in over 90 countries on a direct access basis—that is, directly from INTELSAT rather than only through the signatories. Upon the urging of major U.S. users of INTELSAT services, the FCC initiated a proceeding to consider the merits of requiring direct access in the United States. The FCC made no tentative conclusions on whether to permit direct access and the proceeding is pending.

S. 376 repeals various provisions of the 1962 Satellite Act upon the date of enactment. We believe that all provisions of the original 1962 Act will be unnecessary upon privatization of INTELSAT and, therefore, their repeal could safely take effect at that time. Pending privatization, however, we believe that, in view of the substantial responsibility placed on Comsat as the U.S. signatory in carrying out U.S. policy, it would be beneficial to retain certain provisions providing for Executive branch and FCC oversight of Comsat.[5] We agree that other provisions in the 1962 Act might then be repealed immediately upon enactment of new legislation. These would include those provisions of the 1962 Act that place limitations on the ownership of Comsat. They also would include current requirements that Comsat obtain FCC approval to raise debt or issue stock. These restrictions do not appear to have a valid purpose for 1999 and serve to restrict unnecessarily Comsat's ability to remain competitive in an industry requiring extensive and sustained capital investment.

Finally, we suggest that the Subcommittee consider the significance of retaining a privatized INTELSAT in the United States. Retention of the INTELSAT organization in the United States may prove beneficial to the United States in light of the historical role of the United States in creating the INTELSAT system and the ongoing role of the United States as a leader in global satellite communications.

CONCLUSION

Legislation, such as S. 376, based on pro-competition principles and on the current and projected state of satellite telecommunications in the world is important. The 1962 Satellite Act was created to achieve global communications connectivity via a then-developing technology and to satisfy U.S. national interest goals. Today's concerns are different from those that guided policymakers in 1962. The WTO Agreement and the accompanying Reference Paper signal that the days of state-sponsored service providers are numbered. We look forward to working together to ensure that any future privatization efforts promote the parallel goals of universal access and competition in satellite services for users everywhere. Both of these goals are achievable and we are eager to implement such legislation once your efforts have been completed.

Privatization of INTELSAT and Inmarsat is critical to bringing about real competition in international satellite communications, particularly in the developing world. As Chairman Burns aptly stated, "We need to ensure that satellite technology will continue to provide quality service, and we need to spur innovation. The best way to accomplish both of these goals is privatization. The private sector has always spearheaded technological leaps and I think our first steps into the next century should be quantum leaps deeper into the Information Age."

Your efforts, as well as the changes underway in the INTELSAT and Inmarsat, not only will greatly impact the future of the treaty-based organizations, but will set the stage for further liberalization in countries around the world. Congressional action will help promote an open, competitive marketplace.

We look forward to continuing working with you on these important satellite policy issues.

Senator BURNS. Thank you very much, Mr. Porter.

I will begin by asking a few questions. We have already heard from your testimony, Ms. McCann, your position on the ORBIT bill. You have also been very, very clear in the proper role of the executive branch in reviewing this privatization of INTELSAT. You have also given us some idea of "fresh look." If you could iterate the view of "fresh look" as we have not provided that in our legislation, and we would be interested in what you thought of that.

[5] We recommend that pending privatization of INTELSAT, Section 201(a) and (c)(1)(2)(11) and Section 403 be retained in the 1962 Act.

Ambassador MCCANN. The Administration does not support a policy of "fresh look." We believe that the contracts negotiated betweeny Comsat and its customers were negotiated by private parties in an environment where some competitive alternatives existed. In addition, Comsat has made long-term commitments to INTELSAT based upon those contracts. We believe it would be inappropriate for the Federal Government to overturn such contracts.

Senator BURNS. Given the existence of New Skies and the prospect of a privatized INTELSAT, does the administration believe that INTELSAT must be broken up, maybe even into smaller units or pieces?

Ambassador MCCANN. The Administration does not support breaking up or divesting INTELSAT into multiple pieces, primarily because it is not a sellable position within the intergovernmental organization. We have raised this issue and discussed it with other member governments and signatories, and there is absolutely no support for it.

Senator BURNS. In the view of the Administration, how soon would INTELSAT reach complete privatization if Congress did nothing or failed to pass this bill this year?

Ambassador MCCANN. We believe the privatization negotiations are proceeding favorably, and we would anticipate closure on the privatization within a couple of years.

Senator BURNS. In other words, you think that this is a stepping stone. Will this accelerate it?

Ambassador MCCANN. I am not sure that it will accelerate it, because, as I said, the negotiations, the discussions, are well underway.

There is some concern, based on comments some of the member governments have made to me and others of the U.S. Government, that legislative attempts to negotiate the outcome of the privatization might be negatively viewed by those governments.

Senator BURNS. Mr. Porter, could we have your assessment of the success of the spinoff of New Skies?

Mr. PORTER. Senator, I am not prepared to answer that question. I do not want to give you an incorrect answer. I would be happy to provide the answer to that in a written statement.

Senator BURNS. You can be just like us Senator Stevens. I would say "I do not know." [Laughter.]

Senator BURNS. You know what? That is acceptable, too. Because the longer I am around here, there is more things I do not know than I do.

In the opinion of the FCC, is INTELSAT's own plan for privatization moving too fast? Is it moving too slow? Or do you like the pace?

Mr. PORTER. Well, the position of the FCC, Mr. Chairman, is that we believe that legislation in this area would serve the purpose of encouraging INTELSAT to move at an even faster pace toward privatization. We support your efforts in that regard. We are not prepared to say that we believe the progress of the privatization of INTELSAT at this point is sufficient that, absent legislation, such privatization will take place at a rapid pace.

Senator BURNS. Senator Rockefeller.

Senator ROCKEFELLER. Thank you, Senator Burns.

How is privatization, Mr. Porter, going to help consumers, and, most specifically, rural consumers?

Mr. PORTER. Well, privatization, we believe, will allow for competitors to have access to satellite services on a more equal footing. We believe that that will have a direct benefit to consumers in terms of both offering of services and offering of services at a price which is more affordable to consumers.

Senator ROCKEFELLER. That does not answer my rural question.

Mr. PORTER. As to rural communities, generally, to the extent that markets are open to greater competition, we believe that there would be——

Senator ROCKEFELLER. We do not have competition in rural communities, Mr. Porter.

Mr. PORTER. To the extent that there is privatization, and the objectives of the bill are to increase consumer choice, we would hope that there would be incentives on the part of some operators to provide service to those markets that do not currently receive service.

Senator ROCKEFELLER. Yes. I think I need probably a written response from you, too. Because what you need to understand is that rural areas do not get competition. The history of rural areas, as our chairman knows very well, is deregulation leads to no service. That can be railroads, that can be telecommunications, that can be airplanes. I mean deregulation basically means New York, Los Angeles, here we come; Charleston, West Virginia, Beckley, bye-bye.

So, I am for the bill, and you are, too. We agree on that. But the FCC needs to give me a better answer on why it is convinced that this is going to help rural West Virginia and rural America, whether there are mountains or whether there are not mountains. We need to know that.

[The information referred to follows:]

FEDERAL COMMUNICATIONS COMMISSION,
Washington, DC, April 20, 1999.

Hon. JOHN D. ROCKEFELLER IV,
United States Senate,
Washington, DC.

Dear Senator Rockefeller:

As you requested, I am writing to follow up on the questions you asked during the March 25th hearing before the Senate Subcommittee on Communications on the "Open-market Reorganization for the Betterment of International Telecommunications Act" (S. 376). I appreciate the opportunity to provide these responses.

You asked for supplemental responses on two questions. First, you asked what effect the prospective privatization of INTELSAT might have on global international connectivity. Second, you asked what impact S. 376 would have on provision of telecommunications services to rural areas, particularly rural areas of West Virginia.

INTELSAT is in the process of considering restructuring options, including privatization. As to your first question, the FCC shares your concern that lifeline services and universal connectivity must continue to be provided by a privatized entity. In my written testimony I suggest that one of the legislative criteria for privatization that any legislation should address would be continued provision of services to developing countries.

In its current deliberations on privatization, INTELSAT has identified global connectivity and lifeline services as a core principle for any future restructuring. INTELSAT is considering two approaches to assure that a privatized entity would continue to provide global connectivity and lifeline services to countries that must rely upon the INTELSAT system. One approach is to create a small intergovernmental organization to monitor and ensure that the privatized entity continues to provide these services. The other approach is to include in the corporate documents of the private entity the obligations and commitments to continue these services. It

is too early in the process to determine which approach may be taken by INTELSAT.

As to your second question, our response is two part. To the extent that S. 376 focuses on the privatization of INTELSAT, there is not a direct and explicit relationship to the provision of services in rural areas of the United States. INTELSAT, through Comsat, provides space segment capacity for use by U.S. service providers such as U.S. international carriers for the provision of international telecommunications. INTELSAT does provide domestic services to other countries—including providing leased transponder service and assisting in developing VSAT (very small aperture terminals) based services in rural areas. Should INTELSAT privatize, and should it enter the domestic U.S. satellite services market, it would, of course, have the capability to provide services that could be used for telecommunication services in rural areas in the United States—just as domestic satellite service providers do today. Whether relevant services at appropriate prices become available to rural customers, however, will be a matter for the companies that provide the ground segment and the rural telecommunications service providers who might purchase satellite capacity either from INTELSAT or a distributor of INTELSAT services.

Additionally, potential benefits to rural consumers of a Comsat/Lockheed Martin merger would have to be a result of service offerings by the new company to local telecommunication providers. The applications filed by Lockheed Martin and Comsat with the Commission to approve the first phase of the merger do not specify a commitment to providing services to U.S. rural areas. I cannot at this time comment further in view of the pendency of those applications.

You can be assured that we agree with you on the importance of supporting service to unserved, rural, and economically isolated areas. As we recently stated in our proceeding for establishing services rules for mobile satellite services in the 2GHz frequency band, the Commission is committed to encouraging delivery of telecommunications services, including satellites services, to unserved and high-cost communities and seeking to develop cost-effective incentives for such services.

Again, I appreciate this opportunity to expand upon my responses.

Sincerely,

Roderick Kelvin Porter,
Acting Chief.

Senator ROCKEFELLER. The second question would be in terms of privatization and the whole question of global satellite connectivity, which becomes very important and which Ms. McCann brought up. There are potentially some dangers for global satellite connectivity as you privatize. Can you speculate on what those might be?

Mr. PORTER. The dangers that I would anticipate, Senator, would be dangers that flow from a lack of competition. Beyond that, I am not sure I can comment.

Senator ROCKEFELLER. OK, thank you.

Thank you, Mr. Chairman.

Senator BURNS. We have been joined by Senator Cleland, from Georgia. Nice to see you this afternoon, Senator. If you have an opening statement, we would sure take that statement at this time. If you would like to question our witnesses, you may do that also.

STATEMENT OF HON. MAX CLELAND, U.S. SENATOR FROM GEORGIA

Senator CLELAND. Well, thank you very much, Mr. Chairman. Let me just say, to get on the right side of you, "I do not know." [Laughter.]

Senator CLELAND. Let me just say I appreciate you, Mr. Chairman, for your leadership on INTELSAT privatization legislation. As the newest member of this committee, I do look forward to working with you and my colleagues on the committee on satellite reform.

As an original cosponsor of ORBIT, I believe that the time has come for us to concentrate on passing a satellite reform bill that can be enacted into law this year. The current INTELSAT arrangement was established by the Communications Satellite Act of 1962. The world of 1962 was one of a raging cold war and the need for a Western response to the Soviet-built Sputnik. INTELSAT was that response, with COMSAT being the United States signatory to the INTELSAT Treaty.

However, today is a radically market than that of the 1960's. The cold war is no more, and governments are not the only entities with access to the means to launch a satellite. Many private companies compete with each other for access to the skies. I believe that it is time to extend this same competitive ability to COMSAT and INTELSAT.

From the outset, it is important to recognize that much has changed since last year, when both the House and Senate considered radically different plans to encourage the privatization of INTELSAT. However, I understand that this year there already is an ongoing dialog, Mr. Chairman, between members of the House and the members of the Senate Commerce Committee here to reach a consensus on this legislation.

I look forward to participating actively in such discussions as the legislative process moves forward. I think it is important to note that this year we have a new player in the debate over INTELSAT's privatization. Of course I am talking about Lockheed Martin. I would like to thank Mr. John Sponyoe, of Lockheed Martin, for joining us today as a witness. I believe that Lockheed Martin can provide us with a really fresh and new perspective on what is really happening in the satellite communications market today, particularly on the issue of competition.

It is no secret that ORBIT would change the statutory ownership restrictions on COMSAT, thereby paving the way for Lockheed Martin's proposed acquisition of COMSAT. I will be interested in hearing from our witnesses on how this proposed merger will affect competition in the satellite communications industry. Along with the rapid privatization of INTELSAT, I believe that Lockheed Martin's interest to the satellite communications industry will enhance the already vigorous competition.

Mr. Chairman, just let me conclude my opening remarks by saying I look forward to hearing the testimony of all of our witnesses, and it is my sincere hope that we can work together to move our laws governing the operation of INTELSAT and COMSAT out of the 1960's and into the 21st century.

Thank you, Mr. Chairman.

Senator BURNS. Thank you, Senator. Do you have any questions for the present panel? You may continue on.

Senator CLELAND. Yes, sir. Thank you very much.

Let me just mention one or two things. One provision of this legislation provides the President with the authority to certify whether INTELSAT has privatized in a pro-competitive manner before INTELSAT may have direct access to American markets. Either one of you can comment on this. Do you believe that this authority is best managed by the Office of the President? Is that an opinion that you share one way or the other?

Mr. Porter, your judgment?

Mr. PORTER. We believe that there has to be some provision for the independent regulatory agency to make some assessment in unusual situations. Just to give you an example, in the case today, of WTO countries that automatically get market entry, we still have the ability to examine the extent to which there is a high risk to competition. To the extent that we have a new scenario, where there is no ability on the part of the independent agency to make an assessment in unusual situations about significant risk to competition, we believe that there may be a problem.

So, we would say that there needs to be a provision to ensure that the agency continues to have that ability.

Senator CLELAND. I thank you very much.

Ms. McCann, you are shaking your head yes?

Ambassador MCCANN. I would just like to add that the President, as you know, has the authority to negotiate international agreements. We would not agree to a privatization of INTELSAT—that is, the Administration would not agree to a privatization of INTELSAT—that we believed was not pro-competitive. So we do not actually believe that the certification requirement is necessary, because we would not agree to privatization unless it was pro-competitive.

Senator CLELAND. Thank you.

Either one of you can respond to this, if you like. Mr. Porter, you mentioned competition and privatization. Several large, multifaceted corporations have entered the satellite communications market, bringing forth new ideas and innovation for the benefit of consumers. Some of these commercial entities include GM/Hughes, Motorola and Boeing. Do you believe that new market entrants like Lockheed Martin will be one way to ensure more vigorous competition in the satellite communications industry?

Mr. Porter.

Mr. PORTER. Yes, we do, Senator. We believe that one of the benefits of legislation that would open the market to other entrants is to permit for greater consumer and greater customer choices. We believe that that is a positive objective.

Senator CLELAND. Thank you. Ms. McCann, you are shaking your head yes?

Ambassador MCCANN. I agree.

Senator CLELAND. All right. Well, thank you very much for being here today.

Thank you very much, Mr. Chairman.

Senator BURNS. Do you have any other questions, Senator Rockefeller? Any questions?

Senator ROCKEFELLER. No, Mr. Chairman.

Senator BURNS. I know there have been a couple of Senators that have indicated that they want to submit some questions. We will get those to you. Just like I say, it is a busy afternoon this afternoon. We will get those to you. If you could respond to the Senators and the committee, I would certainly appreciate that.

Senator BURNS. I thank you for coming this afternoon. You are excused. We will move to panel two.

Ambassador MCCANN. Thank you, Mr. Chairman.

Mr. PORTER. Thank you.

Senator BURNS. On the second panel this afternoon will be Mr. Jim Cuminale, General Counsel of PanAmSat Corporation; Ms. Betty Alewine, President and CEO of COMSAT; Mr. John Sponyoe, CEO, Lockheed Martin; and Mr. Conny Kullman, Director and CEO of INTELSAT.

We welcome you here this afternoon to a discussion which would enlighten all of us. Again, I am sure there will be other questions from other Senators that are not here today.

Mr. Cuminale, of PanAmSat, we welcome your testimony at this time.

STATEMENT OF JAMES W. CUMINALE, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, PANAMSAT CORPORATION

Mr. CUMINALE. Thank you, Mr. Chairman, and good afternoon.

Senator BURNS. Nice to see you again, by the way.

Mr. CUMINALE. The same here. It is becoming a habit.

Senator BURNS. You are going to be in that chair long enough that you will be able to vote one of these days.

Mr. CUMINALE. Thank you for extending the opportunity to me today to speak to you on this very important issue. Before I get into my comments, I want to thank you, Mr. Chairman and Senators, for taking up what PanAmSat has long believed was an issue that needed to be addressed. It is of critical importance to us, but, more importantly, we think to a very important marketplace and to a very important service industry.

The other witnesses today, unless I am absolutely surprised, are going to tell you that there is no monopoly. I am here today to tell you there is, in over half the world by population and geography. That is what the FCC found in the COMSAT Nom Dom proceeding, which had to be one of the most hotly contested proceedings in which I have ever been involved, in which pleadings and economic studies were filed by the pound, not the page. That is what the GAO found, in multiple reports it has rendered to the Congress. That is what virtually every other satellite operator and major customer for satellite services will tell you over and over again.

The problem of satellite monopoly manifests itself both in the U.S. domestic market, with respect to international services, and of course abroad. Now, the one thing I want to try to convince you of today is that if you let that monopoly, which is today an Intergovernmental Organization with affiliates called signatories, simply go private, then you have failed, as have we. Because what you have got is that monopoly privatized and unregulated, which is probably the worst of all possible worlds.

Now, on the U.S. side of the formula, the monopoly is in the form of COMSAT's control over the bottleneck facility INTELSAT. Since there is no other way for the customer to get to the destination, the U.S., by law, has effectively given COMSAT a tollbooth on the information highway. The FCC has found that this toll amounts to an average of 68 percent over COMSAT's INTELSAT costs, paid by the U.S. consumer, and the customers will tell you that toll is charged for no added value, for the most part, in services or facilities. If you eliminate that tollbooth, you create the opportunity for competition here, which means reduced rates for the U.S. consumer immediately.

Lockheed and COMSAT are suggesting, and S. 376 would allow, this toll booth be sold for their benefit, to the detriment of U.S. consumers. The question we ask you is, how can the U.S. encourage, let alone demand, that other countries eliminate bottleneck access to their markets when we maintain that monopoly here?

On the international side, other witnesses will tell you that we cannot dictate competitive policies to other countries. We are telling you that governance of the U.S. market is entirely within your control, and that is the way to obtain a pro-competitive privatization. There is absolutely nothing wrong with requiring that this international enterprise, that was formed for the public good, serve that good by fostering competition and rejecting exclusivity and monopoly as a condition to providing broad, commercial communication services in the U.S.

We have suggested that the solution is the division of today's INTELSAT into two roughly equal competing companies. This is a pro-competitive privatization. It would leave each market with two competitors who have been in that market ready to compete with one another. It would not assure us of the ability to get into the market, but we believe, once competition is introduced, that is a natural outflow.

We are open to any other solution that will assure that unlimited access to the U.S. market will not be available to any privatized INTELSAT that has retained the monopoly market access that is a throwback to the days of an intergovernmental entity. That notion, by the way, is entirely consistent with FCC policy that applies to all U.S. licensed operators. None of us is permitted to accept exclusive market access anywhere in the world.

Pro-competitive privatization will not happen overnight. So, INTELSAT's conduct between now and then is critically important. That is why we need to ensure that INTELSAT cannot expand its privileged position prior to privatization. Those are the so-called stand-still provisions that we promote.

Our principal concern with S. 376 is that it suggests and encourages, but does not demand or require. Experience and logic show that market dominance must be wrested away, not requested away. Congress is in a position to do that.

Now, in the limited time available to me, I cannot take you through our comments to the bill, but we have submitted a markup of S. 376. We also have a short list of comments that are in plain English. Additionally, I would just like to inform you that a number of companies, which include GE/Americom, Iridium, Teledesic, Alypso, MCI-WorldComm, AT&T, Motorola, Final Analysis,

Hughes, and of course ourselves, have worked together to draft a bill that all of us can support. We would be more than happy to provide that bill to you so you can see in detail what our interests would indicate.

Thank you again, Mr. Chairman, for the opportunity to speak to you today.

[The prepared statement of Mr. Cuminale follows:]

PREPARED STATEMENT OF JAMES W. CUMINALE, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, PANAMSAT CORPORATION

My name is James W. Cuminale. I am the Senior Vice-President and General Counsel of PanAmSat Corporation. I have testified before this committee twice, the last time in September 1998 regarding S. 2365. I said then that S. 2365 admirably stated the policy objectives of creating a competitive marketplace for international satellite communications, but was very short on practical implementation of these objectives. Ironically, the current bill, S. 376, is better in stating the pro-competitive objectives, but even less practical in implementing them. Because S. 376 takes a step backward, I would like to use my time today to be very clear as to what is at stake here.

Let's start by drawing a line between what are U.S. domestic problems, which the Congress can solve without bringing along 140 other countries, and what are international problems, as to which Congress can motivate other countries to help solve. One pressing domestic problem is that, unlike most other advanced nations, including the 93 who permit direct access, the U.S. is content to leave in place a private monopoly on access to Intelsat: A private monopoly that provides no products or services, but merely exacts a toll on all U.S. access to the Intelsat satellite system.

Our other domestic problem is that we continue to countenance the provision of commercial satellite services by an inter-governmental, treaty-immune satellite cartel; we even have given the Intelsat cartel a tax-haven home in the District of Columbia to compete with private satellite companies. This is not only unfair to the competitors, it is unfair to D.C. taxpayers. Let's begin with the tollbooth and—

ELIMINATE THE PRIVATE MONOPOLY TAX ON SATELLITE ACCESS

In the Communications Satellite Act of 1962, Congress created a private monopoly in Comsat—a monopoly that allows it to collect a tollbooth tax on all transmissions to or from Intelsat satellites providing service to and from the United States. By law Comsat collects this private tax even though it does not own or operate the wires and dishes used to reach those satellites, it does not provide any service to carriers in connection with use of those satellites, or allocate any U.S. bound traffic among carriers using those satellites. Today, customers must write Comsat a check, including a surcharge of up to 68 percent over Intelsat rates, each time they use an Intelsat satellite. This private tax comes right out of the pockets of U.S. consumers.

This law makes no sense here in the U.S. and it is an embarrassment around the world because it makes it more difficult for us to argue for the end of access monopolies overseas. The law granting Comsat a private monopoly to tax U.S. consumers should be repealed immediately, as part of the legislation that allows Lockheed is permitted to acquire Comsat.

When Lockheed Martin urges you to amend the '62 Act to let it buy 100 percent of Comsat, they are really saying is "let us buy Comsat's private monopoly tollbooth." It is an absurdity that the tollbooth exists at all. It would be unconscionable if it is permitted to be sold.

Repeal of the private monopoly will not put Comsat out of business or take anything away from Lockheed. Comsat, and after the sale, Lockheed, would still be the largest shareholder in Intelsat's 20 plus global satellites. In fact, Comsat itself is currently the largest shareholder in New Skies, last year's private spin-off from Intelsat, which operates six former Intelsat satellites for which Comsat now has no right to charge a private tax on access. Obviously, Comsat felt that the revenue generated from use of the satellites alone was sufficient for it to support investment in New Skies. The same result applies to Intelsat—it is a sound investment for Comsat, and Lockheed, even without the monopoly tollbooth tax. Another thing we can do, taking both domestic and international actions, is—

TERMINATE THE U.S.—SANCTIONED CARTEL PROVIDING COMMERCIAL SATELLITE SERVICE

The Intelsat satellite cartel was established decades ago when global commercial satellite service was simply too risky for any one company to undertake. In addition, at that time there generally was only one large telecommunications provider, usually a government ministry or corporation, operating in each country. As a result, at the urging of the United States, an international cartel composed of one monopoly telecommunications provider from each country was formed to provide global satellite service. The United States agreed to host the headquarters of this new cartel tax free in the District of Columbia, leasing them valuable land on Connecticut Avenue for the sum of one dollar per year.

Today private companies have established global and regional satellite networks that provide commercial service. In many countries, national laws have changed and there are numerous telecommunications providers competing in the marketplace. Yet the cartel still exists and it has priority access to satellite slots and below commercial market financing. Monopoly national telecommunications providers still meet today in the rent free headquarters on Connecticut Avenue, courtesy of the United States, to set prices and work against open market access by other satellite providers.

Competitive satellite providers seek an end to this injustice. Domestically, the United States should repeal the headquarters agreement that provides diplomatic immunity, tax protection, and free rent to this international satellite cartel. Internationally, we actively should seek to terminate Intelsat by spinning off its remaining satellite assets to two new private companies, in addition to last year's New Skies spin-off. This is what a pro-competitive privatization is all about. Termination of Intelsat through privatization will not result in the loss of the satellite assets or financial investment by those who built the Intelsat system. As New Skies will demonstrate, the Intelsat satellite assets can be used to provide competitive services without diplomatic immunity. When there is a pro-competitive privatization and there is no more intergovernmental entity, the private successors to Intelsat will be treated the same as all other private regional and global satellite systems.

The end of Intelsat as an intergovernmental entity also does not mean the end of Comsat. As I've said, Comsat is the largest single shareholder in Intelsat and the New Skies spin-off. All of the revenue stream from Comsat's investment in New Skies six, and Intelsat's 20 plus satellites will remain. Moreover, Comsat has been working hand in glove with the world's key telecom companies for over 30 years; surely they can use these contacts and Intelsat's former satellites to develop a successful business.

Finally, ending Intelsat will not result in the loss of satellite services to any nation currently receiving such service. Nor will it prevent service to any country that seeks satellite services. Private companies will provide these services, because, unlike undersea cables, satellite coverage is cost-effective throughout broad areas of the earth's surface. And if there's any doubt about the capacity of private companies to serve poor countries, the United States unilaterally can assure global satellite service. All the FCC has to do is require that, as a condition for access to the U.S. market, every private satellite operator must provide service upon request to any country that is within the coverage area of its satellites and has the necessary facilities and infrastructure to send and receive satellite service.

Another international problem posed by the Intelsat system is that it makes it more difficult for private competitors to get market access to countries that are Intelsat members. Therefore—

THE UNITED STATES SHOULD ACT TO ENSURE FAIR MARKET ACCESS

One of the greatest problems posed by the continued existence of Intelsat as a government-sanctioned cartel providing commercial services is that the members of the cartel, the national telecommunications providers, have a direct financial interest in requiring use of the Intelsat system. As a result, these national providers work through Intelsat to block access to their countries by services using competing private satellite services.

To ensure that the privatized entities created through the termination of Intelsat do not impede market access, the United States should use access to the U.S. market as leverage to assure that U.S. companies have access to foreign markets. This leverage should be applied to the privatized spin-offs from Intelsat. The FCC should allow access to the United States market by a privatized spin-off only if it:

(1) is incorporated as a private company in a country which has signed the World Trade Organization Basic Agreement on Telecommunications Services;

(2) does not have any employees, directors, officers, or assets in common with other privatized Intelsat spin-offs or ownership by monopoly telecom companies that control access to their home markets; and

(3) has not obtained satellite slots, or contracted for satellites after January 1, 1999, other than by using the same satellite registration process and financial terms available to all other private commercial satellite service providers.

SOME COMMENTS ON S. 376

Measured against these goals, S. 376 simply does not go far enough. It not only keeps the private monopoly tollbooth, it permits Lockheed Martin to buy Comsat's right to tax U.S. consumers. It does nothing to end Intelsat's tax-free status in the District of Columbia or its other legal immunities in the U.S. The bill doesn't end Intelsat, it merely threatens the end of U.S. participation in Intelsat, while still creating many back-end exceptions for continuing U.S. participation. The bill ousts the FCC from any meaningful determination as to what is a pro-competitive privatization, improperly substituting the President for the independent licensing agency. And the bill does not use the leverage of U.S. market access to open up markets overseas—access that is blocked by Intelsat members with the active support of Intelsat.

For over a decade, PanAmSat has been calling for the Congress to step in and correct the legislative framework for the international satellite industry. The time is now.

Senator BURNS. Thank you.

Next we will hear from Ms. Betty Alewine, President and CEO of COMSAT.

STATEMENT OF BETTY C. ALEWINE, PRESIDENT AND CHIEF EXECUTIVE OFFICER, COMSAT CORPORATION

Ms. ALEWINE. Thank you, Mr. Chairman and members of the subcommittee. On behalf of COMSAT Corporation, it is a privilege to appear again and present our views this time on S. 376.

Let me begin by saying that we believe that this bill is a balanced and constructive proposal that should serve as the basis for revision of the 1962 Satellite Act.

Now, having said that, Mr. Chairman, when I was growing up in Mississippi, I heard a lot of stories about fish that were this big. These days, I hear a lot of stories about COMSAT and how we are this big. Unfortunately, those stories are just about as truthful as the fish stories that I used to hear. Of course, it is easy to exaggerate when you are talking about the fish that got away. But in COMSAT's case, you can measure us and you can weigh us. Whenever policymakers do that based on fact, they usually realize that the whoppers people are telling are just about as phony as those fish stories.

Now, what these whoppers have in common is the claim that COMSAT is a monopoly. In fact, our market share is less than 20 percent for voice and data, and less than 35 percent for video. Where I come from, you are not a monopolist if 80 percent of the market is served by your competitors. But you do not have to take my word for it, because last April, almost a year ago, after looking at the issue for a full year, the FCC ruled that COMSAT had no monopoly power in any major market.

Now, our opponents try to spin that FCC finding by claiming that COMSAT still charges monopoly rates for traffic to countries where there are no competitive choices to INTELSAT, the so-called thin routes. They go on and on about how many thin route countries there are. But what they do not tell you is that these coun-

tries account for only 7 percent of our traffic, and less than 2 percent of all of the circuits used by U.S. carriers for their international traffic.

Last year, COMSAT's total revenue from thin route traffic was less than $19 million. This is in an industry where total U.S. revenues are about $19 billion. For occasional use television, where we supposedly have a monopoly in 142 countries, our thin route revenue was $500,000. Our prices on thin routes are the same as in the most competitive markets. We serve thin routes. We go to the rural areas of the world to meet our Universal Service obligations, not to earn monopoly profits.

Yet our competitors claim that this tiny, tiny portion of our business poses such an anti-competitive threat that the Congress of the United States should impose service restrictions that will kick us out of the entire market.

Another whopper you often hear is that COMSAT collects a 68-percent markup over the rates that it pays to INTELSAT. In fact, both the FCC and the National Economic Council have stated that the 68-percent figure is misleading, because it does not include all the costs that COMSAT incurs in providing service. Our actual margin is about the same as our competitors. There is nothing monopolistic about that.

Still another whopper is that COMSAT has monopoly access to INTELSAT. It is true that COMSAT is the exclusive service provider on the INTELSAT capacity that we own. But providing service over the facilities that we paid for does not give us a monopoly. The truth is that consumers right now have more choices than ever. We face intense competition from fiber cable operators, from other satellite systems, and even from other INTELSAT signatories.

Another story that you have heard is that COMSAT's customers should be able to nullify our contracts because they are anti-competitive. The nice name given to this idea is "fresh look." In fact, it is standard industry practice for customers to agree to long-term contracts in order to obtain lower rates. No different than many of us do every day with everything from health club memberships to magazine subscriptions.

Both the FCC and a U.S. district court looked at COMSAT's long-term contracts and found that they do not impede competition. The FCC noted that these contracts do not lock up the market, because they cover less than 20 percent of the traffic. We applaud S. 376 for expressly rejecting this egregious idea.

The last whopper that I want to address is that COMSAT wants to sell its monopoly to Lockheed Martin. All I can say is that when a company with no market share buys a company with less than 20 percent market share, that is no threat to competition. COMSAT's merger with Lockheed Martin will increase competition, and that is exactly why our competitors want to stop it. They hope to dominate the market themselves, and afraid that this merger will upset their plans.

The reason for all of these fish stories is simple: If there is no monopoly, there is no basis for the punitive legislation that our competitors favor, no basis for service restrictions for direct access, for nullifying our contracts, or for blocking our merger with Lock-

heed Martin. That is why we are pleased that S. 376 is based on reality in the market today versus rhetoric.

S. 376 creates a very powerful incentive to expedite the INTELSAT privatization. It modernizes the Satellite Act and it looks forward based on the actual market conditions that exist today, rather than looking backward at conditions that no longer exist.

Mr. Chairman, a much more detailed discussion of COMSAT's views on S. 376 is contained in my written testimony, which has been submitted for the record. I would like to thank you and each of the members of the committee today for holding this hearing, and I would be pleased to answer your questions. Thank you.

[The prepared statement of Ms. Alewine follows:]

PREPARED STATEMENT OF BETTY C. ALEWINE, PRESIDENT AND CEO COMSAT CORPORATION

Mr. Chairman, and members of the Subcommittee: On behalf of COMSAT Corporation ("COMSAT"), it is a privilege to appear today and present COMSAT's views on S. 376, the "Open-market Reorganization for the Betterment of International Telecommunications Act" ("ORBIT"), which amends the Communications Satellite Act of 1962 (the "Satellite Act"). I last testified before this Subcommittee seven months ago and urged that Congress revise the Satellite Act promptly. Since then, the need for legislation has become even greater for three principal reasons.

First, the full privatization of the business operations of Inmarsat is set for next month. However, a change in the law is required for the U.S. government to continue its participation in overseeing the provision of vital Global Maritime Distress and Safety Services ("GMDSS") by Inmarsat.

Second, the INTELSAT Assembly of Parties is scheduled to meet in October 1999, to consider various privatization proposals. Enactment of legislation *before then* will provide U.S. negotiators with clear guidelines and objectives for a pro-competitive outcome; and entering into that international meeting with a unified position will enhance U.S. prospects considerably.

Third, the approval process at both the Justice Department and the FCC for Lockheed Martin Corporation's ("Lockheed Martin") proposed acquisition of COMSAT is underway and could be finished in a few months. However, the obsolete provisions in the Satellite Act that limit ownership of COMSAT stock must be removed to complete the transaction.

Senator Burns, with the early introduction of S. 376, you and the co-sponsors of the bill are to be commended for taking the steps necessary to address all these matters. S. 376 will ensure that, after Inmarsat is privatized, the U.S. government has the authority to continue its role in the provision of GMDSS services. It also will allow the United States to be a positive and constructive participant in the privatization of INTELSAT. In addition, it will promote competition among U.S. satellite companies with long overdue deregulation. All of these measures in combination will bring enormous benefits to American consumers. Satellite legislation is now poised to move quickly this year. Let me explain why.

We do not begin today's hearing with a blank slate. Much was learned about the industry and the forces driving international satellite reform during the 105th Congress. The one thing that did emerge clearly from the last session is that the Congress and the Administration share identical objectives—to privatize INTELSAT in a pro-competitive manner and to update the laws regulating the U.S. satellite industry to reflect the market conditions of today, rather than the state of affairs that existed decades ago after the launch of Sputnik. The "October Sky" of 1999 bears little resemblance to that of 1962 when Congress passed the Satellite Act. Today, the debate centers on the specific measures necessary to complete the privatization of INTELSAT (a process already well underway), and on whether COMSAT's rivals need to have Congress legislate a particular market outcome once the Satellite Act's restrictions on COMSAT are removed.

COMSAT submits that S. 376 strikes the right overall balance. It creates powerful economic incentives to expedite INTELSAT privatization, while minimizing unilateral dictation of specific terms and conditions to other nations. At the same time, the bill ensures that the interests of U.S. consumers are served by the restructuring plan ultimately adopted by INTELSAT. U.S. market access is predicated on a Presidential certification that the final privatized structure of INTELSAT will not distort

competition, as defined by factors clearly set forth in the statute. In the event of undue delay, the bill provides for U.S. withdrawal from INTELSAT if a final decision by its member nations is not attained by January 1, 2002.

On the domestic side, S. 376 removes all the antiquated provisions of the Satellite Act and makes large strides toward regulatory parity for all competitors. The bill removes the ownership restrictions of the 1962 Satellite Act that have prevented COMSAT from merging with, or being acquired by, others. This will permit the Lockheed Martin merger to go forward, subject to Justice Department and FCC approvals. While COMSAT does have concerns with certain provisions of the bill, which I will elaborate upon, it is a sound bill. It is a pro-competitive, market-oriented and deregulatory privatization measure. It promotes user choice and consumer interests, protects the needs of the national security community and advances U.S. trade interests.

For these reasons, S. 376 represents a major milestone in this debate. Based on the Subcommittee record and recent administrative and judicial decisions, the bill accurately reflects the current state of competition in the international satellite industry, appropriately relies on market forces and imposes government regulation only where absolutely necessary. The bill recognizes, as the FCC did last year, that COMSAT's position in the international telecommunications marketplace is no longer dominant, and that COMSAT has no monopoly power in any major service or geographic market it addresses. The FCC has recently held, after extensive analysis, that these major markets, comprising 93 percent of COMSAT's business over INTELSAT, are subject to "substantial competition."

Only on the so-called "thin routes"—that is, countries where COMSAT carries out its universal service obligations—is the company regulated as a dominant carrier. These thin routes in the aggregate account for only 7 percent of COMSAT's traffic, and about $19 million in revenue of the nearly *$19 billion market* for U.S. international telecommunications services (.001 percent!). It also is important to note that COMSAT's rates for these thin routes are the same as, or lower than, the rates for the markets where we face the most vigorous competition. So it can be said without equivocation that COMSAT delivers the benefits of competition everywhere. *See* Attachment 1.

Some competitors attempt to mask this reality by pointing to a large number of thin route countries for some marginal COMSAT services. For example, one competitor frequently cites as evidence of COMSAT's enormous monopoly that we are the exclusive provider of occasional use-TV satellite capacity to 142 thin route countries. We have actually never even received service requests from our customers to more than one-third of these countries for many years. Moreover, the Subcommittee should be aware that this enormous COMSAT "monopoly" generated all of $500,000 in revenue in 1998.

COMSAT secures capacity on these thin routes in furtherance of its universal service commitments, not because of the negligible revenue generated. For competitors to urge the Congress to bar COMSAT from competitive growth markets because we alone serve thin routes makes little sense—except to competitors who search for any conceivable way to keep COMSAT hamstrung. The sponsors of S. 376 should be commended for rejecting this market-distorting rhetoric and crafting legislation based on actual competitive conditions.

COMSAT's monopoly over satellite communications to and from the United States ended in 1984, when separate satellite systems were authorized to compete with COMSAT and INTELSAT. The international telecommunications landscape has changed dramatically since then, and COMSAT is now just one firm among many in a marketplace characterized by vibrant, *facilities-based* competition. We face strong challenges daily from other satellite companies such as Hughes/PanAmSat, Loral, GE Americom, Columbia and Teleglobe Canada. In addition, customers requiring international transmission capacity are by no means tied to satellite technology. Over the last decade, high-capacity, undersea fiber optic cables have actually become the dominant medium for the provision of international voice and data services. These cables directly connect the U.S. to over 125 countries, including every market of significance, with more fiber cables being added on a routine basis. For these services, COMSAT competes daily against multi-billion dollar carriers such as AT&T, MCI WorldCom and Sprint. *See* Attachment 2.

Last year, AT&T generated over $8 billion in international service revenue, and is now about to partner with British Telecom in a $10 billion global telecommunications venture. MCI Worldcom had international service revenue of over $4 billion, and Sprint has a multi-billion dollar international enterprise as well. To put all this in perspective, COMSAT's entire INTELSAT service revenue in 1998 was only $266 *million.* Pleas of these competitors to have Congress legislatively nullify our non-exclusive, carrier contracts because COMSAT wields "monopoly power" over them

are ludicrous. These companies have enormous bargaining power, and do not need the help of Congress to renegotiate their contracts with COMSAT, a pattern they have followed for years.

As described below, COMSAT's market shares have declined dramatically in the last decade to levels as low as an average of 12 percent for voice and data services to countries with the heaviest traffic volumes ("thick routes"), and an average of no more than 35 percent in multi-carrier international video markets. During the same time, many of COMSAT's satellite competitors have enjoyed enormous success. Later this year, the PanAmSat satellite fleet will surpass INTELSAT in size by a significant margin, with 24 satellites in-orbit compared to 19 for INTELSAT.

PanAmSat also touts to Wall Street a "non-cancelable" backlog of service contracts of $6.3 billion, compared to only a $700 million contract backlog for COMSAT. Loral, with its acquisitions of the satellite fleets of AT&T Skynet, Orion and Satmex, is another formidable competitor. In short, there can be no dispute that the competitive marketplace is working. Nor can claims be taken seriously that COMSAT has special privileges and advantages that have allowed it to maintain a monopoly position. If we did, our competitors would not be multiplying and flourishing at the rate that they are.

The truth of the matter is that, absent rapid privatization of INTELSAT and modernization of the Satellite Act, competition will diminish. INTELSAT's structure must be privatized if it is to respond to customer demands with the simplicity and speed of its competitors. COMSAT's investment in INTELSAT is at risk without these fundamental changes. COMSAT itself is without the wherewithal in the long run to stand alone against the vertically-integrated GM/Hughes/PanAmSat, Loral/Orion/Satmex, and foreign global and regional satellite systems, not to mention the giant cable consortia led by AT&T and MCI Worldcom.

That is the reality of today's international telecom markets. COMSAT's announced plans to merge with Lockheed Martin are, in large part, an effort to meet these competitive challenges. This union will combine COMSAT's established satellite and networking business with Lockheed Martin's space industry expertise, technology, resources and capital to create a more effective competitor in the global telecommunications services market. In the end, all the hue and cry over the need to restrict COMSAT services, abrogate COMSAT's contracts, and minimize its retail business through direct access, is nothing more than an effort to avoid that prospect. In contrast, S. 376 will enable American consumers to be the true beneficiaries of robust and fair competition.

Before turning to the specific provisions of S. 376, I would like to provide the Subcommittee with some additional relevant background on COMSAT, and more detailed information on the industry participants actively involved in this legislative debate. This material is essential to address some misinformation about COMSAT and various criticisms being raised about certain provisions in S. 376, criticisms which simply do not withstand analysis.

COMSAT and the Communications Satellite Act of 1962

In 1962, pursuant to the Satellite Act, COMSAT was created as a *private* American corporation with NO government ownership, subsidies, or guarantees. COMSAT is owned by approximately 33,000 shareholders who hold 53 million shares of stock traded on the New York Stock Exchange. While its name is well known as the pioneer of commercial satellite communications, it is actually a small company, with just over $600 million in total revenue in 1998.

COMSAT was established to carry out the national policy of creating and operating a global satellite communications system in partnership with other nations. That satellite system is known as INTELSAT. The Congress decided that the United States would participate in this global system via COMSAT through private capital invested by ordinary Americans. In fact, the Satellite Act directed that the stock initially offered by COMSAT "be sold at a price not in excess of $100 for each share and in a manner to encourage the widest distribution to the American public."

Working to fulfill the mandate of the Satellite Act, COMSAT has been successful on a historic scale. COMSAT and INTELSAT today provide universal coverage connectivity on a non-discriminatory basis to developed and developing countries throughout the world. COMSAT and INTELSAT are important components of America's telecommunications infrastructure and one of the main reasons why the United States exerts technological leadership—dispersed among many companies—in the field of satellite communications.

The satellite facilities COMSAT invested in are vital to both the civilian and military functions of the U.S. Government. They enable American businesses to serve global markets and manage global enterprises. COMSAT is also dedicated to the universal service mission of the Satellite Act, and the company carries traffic to for-

eign points that do not generate sufficient volume for international carriers to construct their own cable facilities, and/or which other satellite firms opt not to serve at all. Moreover, and unlike any other U.S. satellite company, COMSAT offers nondiscriminatory access at competitive rates to its facilities to all comers, including its competitors.

The work being done at COMSAT Laboratories further contributes to keeping the U.S. at the forefront of space communications technology, including applications to meet national defense requirements. COMSAT holds hundreds of patents which are the result of the company's investments in research and development. Those innovations have made satellites an integral part of today's global information infrastructure. To cite the latest example, COMSAT Labs just developed a remarkable new technology, known as Linkway 2000$_{TM}$, which allows U.S. carriers and Internet Service Providers to transmit digital data streams with the same speed, quality, and reliability as fiber optic cables, using a variety of network platforms incorporated in one device. The full potential of the Internet can now be made available to many developing nations and remote locations lacking adequate terrestrial infrastructure—all via COMSAT satellite technology.

State of Competition

When COMSAT launched its first satellite in 1965, it was the sole provider of international satellite communications services. As a monopoly, the company was subject to FCC reviews of its investments and had a regulated rate base on which its earnings were strictly limited. However, the days of monopoly are long gone!

In November 1984, President Reagan signed a Presidential Determination that opened the market for international satellite communications to alternative satellite systems. Since then, a healthy U.S. satellite industry has developed, with strong facilities-based rivals like Hughes/PanAmSat, Loral, Columbia, GE Americom and foreign systems—all competing with COMSAT in the U.S. for the provision of international satellite capacity. *Space Business News* reported this February that "more satellites have already been launched in the 1990's than in the preceding three decades combined."

The transition of the U.S. international satellite industry from its single system origins to today's highly competitive environment is a remarkable success story. An article in the August 1998 edition of *Via Satellite* captures the current state of competition quite well:

> The United States is home to many of the world's leading private global satellite operators. The Hughes/PanAmSat merger has created by far the largest of such companies. GE Americom and Loral Skynet are expanding beyond their traditional U.S. market into Europe, Latin America and the Asia Pacific. These companies are building fleets that rival INTELSAT's in size, at the same time that INTELSAT is losing market share and spinning off five of its spacecraft in a new private venture.

The facts underlying this assessment are even more revealing. For instance, from a single satellite launched in 1988, the Hughes/PanAmSat system is currently in the midst of a $2 billion expansion program to increase its fleet to 24 satellites by the end of 1999, with the company scheduled to launch a satellite *every two months* between now and then. PanAmSat has a backlog of $6.3 billion in firm contract orders and had $737 million in revenue in 1998. Today, PanAmSat alone has a market capitalization several times larger than that of COMSAT.

In contrast, INTELSAT divested part of its fleet in 1998, thus reducing its size from 24 to 19 satellites. Because COMSAT, in turn, must share capacity on INTELSAT satellites with many other Signatory owners, and because much of the INTELSAT system is devoted to non-U.S. service (*e.g.,* Asia—Europe), the total capacity now available to COMSAT to serve the U.S.-international market in competition with PanAmSat, Loral and others amounts to the equivalent of just 3—4 satellites. Moreover, COMSAT's backlog of firm contract orders is nine times less than that of PanAmSat, and COMSAT's 1998 revenue from the INTELSAT business was only $266 million.

As noted, Loral is another major U.S. company competing to offer international satellite services. As a result of its $1.5 billion acquisition of AT&T's Skynet satellites, the Orion system, and a majority share of the Mexican Satmex satellites, Loral has 10 geostationary satellites in orbit, and is planning to expand its fleet to 15—17 satellites by 2001. GE Americom, Teleglobe, and Columbia Communications are also vying to carry voice, video, and data traffic via satellite between the U.S. and overseas destinations. In fact, Teleglobe recently announced a new partnership with EUTELSAT (a European satellite firm with 14 satellites in-orbit) to provide additional transatlantic satellite services to and from the United States.

Given the state of the marketplace and the billions of dollars being invested in competing systems (and considering COMSAT's declining market shares), no credence can be given to the claims being made that COMSAT has unfair advantages which are harmful to competition, or that separate satellite systems suffer from foreign market access problems. According to the FCC, "PanAmSat provided full-time video service to 139 countries"—only four countries shy of the entire INTELSAT membership. The harsh reality is that, as a member of an intergovernmental treaty organization structured for a much earlier era, COMSAT has limited ability to participate in the growth of this industry. Indeed, in April 1998, when the FCC granted COMSAT non-dominant status in 93 percent of its markets, the agency observed that "over the last three years, PanAmSat's and Hughes' satellites have captured 70 percent of the growth in international video traffic to and from the U.S."

Competition to INTELSAT and COMSAT is about to intensify even more with a new generation of satellites that will utilize the super-high frequency Ka-band. The FCC has authorized thirteen Ka-band systems, comprising some 73 satellites, which will offer a variety of data and multimedia applications. These systems are not speculative. On March 17, 1999, *The Wall Street Journal* reported that the Board of Directors of General Motors Corporation—the parent of Hughes/PanAmSat—approved the infusion of $1.4 billion to begin building the Hughes Ka-band Spaceway Satellite System, also noting that this "funding decision essentially commits the satellite maker and service provider to spend a total of $4 billion on the largest first phase of the project." Other firms planning to provide similar broadband satellite services include Loral, GE Americom, Lockheed Martin and Teledesic (backed by Motorola and Boeing). According to the FCC, these new satellites should help increase worldwide revenues from commercial fixed and mobile satellites from the 1996 level of $9.4 billion to $37.7 billion in the year 2002. Again, COMSAT's revenue from its INTELSAT operations in 1998 was just $266 million.

Satellite capacity, however, is only part of the market for international telecommunications services available to consumers today. Since 1988, undersea fiber optic cables have far and away replaced satellites as the dominant medium for international telephone and data transmission. This dramatic increase in competition from undersea cables resulted from the elimination in 1989 of regulatory protections designed to promote international satellite communications, and from extraordinary developments in fiber optic technology. The capacity and quality of fiber optics is exponentially greater than the old copper analog cables. The first trans-Atlantic cable, TAT–1, was laid in 1956 and had the capacity to provide only 44 voice-grade circuits. TAT–12/13, which entered service in 1996, has the all-digital capacity to transmit 120,000 voice conversations (or an equivalent amount of data). That is 2½ times the capacity of the largest INTELSAT satellite, and is already considered old technology.

Due to rapid deployment of undersea fiber cables, there is more than enough unused international transmission capacity now available to absorb all of COMSAT's current traffic. Today, the United States has direct fiber connections to over 125 countries, and these cable systems continue to proliferate and with even greater capacity. For example, CTR Holdings L.P., is in the midst of a fiber-cable project (known as Project Oxygen) that will have 265 landing points in 175 countries and cost $14 billion. On March 15, 1998, the FCC licensed this private cable company to build the first phase "linking together a total of 78 countries and locations on all continents except Antarctica." Cable installation is scheduled to begin later this year.

Another cable firm, Global Crossing, Ltd., has raised $3 billion and is currently laying fiber links from North America to Japan, Central America and the Caribbean. The initial installed capacity on Global Crossing's first transatlantic cable Atlantic Crossing (AC–1) can handle more than 480,000 simultaneous two-way conversations. Service commenced in May 1998. By the end of 1998, Global Crossing had already reported contract sales for capacity exceeding $1 billion. And just last week, Global Crossing entered into an agreement to purchase Frontier Corporation—one of the nation's largest providers of domestic long distance service—for $11.2 billion. The combined companies will have a market capitalization of about $30 billion and $4 billion in revenue for 1999.

There is no question that competition from separate satellite systems and fiber optic cables has changed the global telecommunications marketplace beyond what could have been imagined by the creators of the 1962 Satellite Act. In every significant market segment that COMSAT serves via INTELSAT, the FCC has found that COMSAT's market share has dropped well below monopoly levels. COMSAT's share of the international switched voice and private line market has fallen from approximately 70 percent in 1987 to less than 20 percent today, and to less than an average of 12 percent in the most heavily trafficked geographic and service markets.

COMSAT's share of the international video transmission market has declined from nearly 80 percent in 1993 to approximately 35 percent today. Cables and separate satellite systems carry the majority of traffic in every major geographic market. *See* Attachment 3.

Even in the low volume geographic markets (the "thin routes" comprising approximately 2 percent of the circuits utilized by U.S. international carriers), U. S. consumers are not confined to COMSAT to reach those countries using the INTELSAT system. Users can also turn to the Canadian participant in INTELSAT, Teleglobe, which the FCC has authorized to operate in the U.S. As a practical matter, this means that COMSAT's $19 million thin route business is also subject to real competition.

Teleglobe is now the world's second largest owner of fiber optic cable capacity as well, and it recently merged with the 5th largest U.S. long distance carrier, Excel Communications. That uncontested merger was valued at $7 billion (compared to $2.7 billion for Lockheed Martin-COMSAT) and will create a global, integrated service provider with access to 240 countries. Teleglobe has opened offices in Chicago, Miami and San Francisco, and announced in January that it "has grown to service more than 100 domestic carriers in the U.S., including several Regional Bell Operating Companies," and that it also provides service to U.S. television broadcasters "including ABC, CBS, CNN and Fox News."

In February 1999, Teleglobe expanded its U.S. satellite operations by entering into a capacity agreement with EUTELSAT. As reported in *Satellite International,* "EUTELSAT has secured a link to the coveted U.S. market without having to deal with the thorny issue of obtaining a U.S. license. Under the terms of the deal . . . EUTELSAT will be able to offer other customers access to Teleglobe's teleports in New York, Washington, D.C. and Montreal." This alliance creates yet another satellite alternative to COMSAT for U.S. consumers to reach overseas markets.

Deregulation

In April 1998, the FCC ruled that COMSAT is *not* a monopoly, but rather a single competitor in an industry characterized by *substantial, facilities-based* competition. Specifically, the Commission reclassified COMSAT as a "non-dominant" carrier and found that:

> Because of the unprecedented growth in the industry . . . COMSAT is no longer the sole commercial provider of international switched voice and video transmission services via satellites. Today, other satellite companies effectively compete against COMSAT and the INTELSAT satellite system . . . . In the future, new voice, data and video services authorized by the Commission will be available to consumers via low Earth orbiting, non-geosynchronous satellite systems. . . . These new services will compete against existing satellite services, thereby providing consumers with more choice for their international telecommunications needs. Moreover, the transoceanic capacity and geographical coverage of fiber-optic cables has burgeoned since 1985, and they now provide a highly competitive transmission alternative for providers of international switched voice and private line services. The emergence of competitors to COMSAT has likewise increased the supply of satellite transmission capacity for the provision of these services.

Based on a detailed economic analysis, the FCC then determined that COMSAT no longer has monopoly power in the product and service markets accounting for over 90 percent of COMSAT's business on the INTELSAT system—switched voice and private line service to thick route markets, full-time video service in all geographic markets, and occasional-use video service in the multiple carrier market.

Hopefully this will put to rest, once and for all, the seemingly never-ending claims that COMSAT's exclusive access to INTELSAT creates a monopoly. COMSAT's exclusive right to use the space segment capacity it paid for is no different than the exclusive right enjoyed by other satellite providers to sell services on the facilities they paid for. That alone does not make a monopoly. The primary determining factors are whether other suppliers offer consumers substitutable choices and whether consumers are able to exercise those choices. There can be no doubt that when over 80 percent of international voice traffic to and from the U.S. is being placed on non-COMSAT facilities, and over 65 percent of international video traffic is placed on non-COMSAT facilities, COMSAT's exclusive access to INTELSAT is not a monopoly. *See* Attachment 4.

With all this facilities-based competition, in February 1999, the FCC further extended its deregulation of COMSAT. The agency eliminated rate of return regulation on COMSAT's thin route business, replacing it with a far less onerous form of incentive regulation. In connection with that decision, COMSAT pledged to charge

consumers of its thin route services the same rates we charge on the most highly competitive routes ("thick routes"), and not to raise its prices in the future. COMSAT also committed to annual 4 percent reductions for voice service on those thin routes through 2002. I am aware of no other carrier making similar commitments to its customers, and this is certainly not the behavior of an alleged monopolist. As the FCC recognized, COMSAT's proposal on thin route pricing was driven by the ever increasing levels of competition in the global telecommunications markets in which it operates.

Progress on INTELSAT Privatization

Despite the claims of its competitors, INTELSAT is not immune from the dynamic nature of market competition. Because COMSAT is the largest investor in INTELSAT, and a private U.S. corporation accountable to its shareholders, we could not stand by and allow COMSAT's investment to diminish in value as competition significantly intensified. As mentioned, the governance and financial structure of an intergovernmental treaty organization are simply not suitable for today's fast-paced environment. Therefore, nothing short of full privatization, in COMSAT's view, will suffice.

It has taken significant ramp-up time to convince 142 other nations to proceed down this path, especially due to concerns about maintenance of universal connectivities to less developed countries by a private, for-profit firm. Nevertheless, major progress toward achieving this goal has already been made. INTELSAT itself divested a quarter of its fleet (five in-orbit satellites and one under construction) in November 1998 and created a new, independent, fully private global satellite company, New Skies Satellites, N.V. INTELSAT's member nations also unanimously agreed at that time that the New Skies partial privatization would only be the "first step" in reforming INTELSAT. Building on the momentum of New Skies, INTELSAT next elected a new Director General and CEO who ran on a platform of full privatization, and subsequently has set a goal to reach such an agreement by INTELSAT member nations by the end of 2001.

Demands by some competitors that a pro-competitive privatization requires yet another "break-up" of INTELSAT into three or four more "successor entities" lack any rational basis. U.S. legislation calling for the break-up of INTELSAT will not advance the privatization process, but is more likely to generate backlash and delay. But most important, such a drastic measure is not necessary to promote competition.

It bears re-emphasis that, in the aggregate, the INTELSAT capacity devoted to serving the U.S. market amounts to the equivalent of less than four satellites. The dismemberment of INTELSAT, as Hughes/PanAmSat advocates, really should be seen as an effort to fragment INTELSAT into a number of weaker systems that will not be able to compete with Hughes/PanAmSat effectively. As noted above, the Hughes/PanAmSat global satellite fleet will surpass all of INTELSAT in size by the end of this year. Given this success, the vigorous efforts of Hughes/PanAmSat to have the Congress legislate the dismantling of its major competitor into a number of marginal systems is completely self-serving. Other satellite competitors, like Loral and GE Americom, are quickly approaching INTELSAT in size as well. Moreover, foreign entities, like British Telecom, Teleglobe and EUTELSAT, are also serving the U.S. market, not to mention the fiber cable consortia controlled by AT&T, MCI Worldcom, and others.

There are, however, sound means for the Congress to ensure a pro-competitive privatization, and S. 376 establishes just the right framework. INTELSAT will not be given direct access to the U.S. retail market unless the President of the United States determines that it has been privatized in a pro-competitive manner. That should be a more than adequate safeguard to protect competition in U.S. markets. Furthermore, the service restrictions embodied in S. 376 will provide a powerful impetus for rapid privatization, without impairing U.S. users, the national security or U.S. trade commitments. Accordingly, the Subcommittee is respectfully urged to reject any thinly disguised efforts to require a restructuring that is market-distorting and anti-competitive in effect, as Hughes/PanAmSat advocates.

While INTELSAT has partially privatized and is in the midst of completing the process, another international satellite organization, Inmarsat (which provides satellite services to maritime, aeronautical and land mobile users) has moved rapidly to full privatization. COMSAT is the largest owner of Inmarsat, and for the same reasons as with INTELSAT, we vigorously pursued a full privatization agenda with the other 83 member countries of that treaty organization.

COMSAT is pleased to report that on April 15, 1999, Inmarsat and its fleet of nine mobile service satellites will convert its business operations into a fully private, commercial company. A small intergovernmental organization with a staff of about

three people will remain in existence to ensure that the new private firm continues to perform its public service obligations of providing Global Maritime Distress and Safety Services ("GMDSS"), consistent with the international Convention on the Safety of Life at Sea ("SOLAS"), to which the United States is a party. However, due to a recent interpretation by the Justice Department pertaining to future U.S. participation in Inmarsat, legislation is required to conform the 1978 Inmarsat Act (Section 5 of the Satellite Act) to this privatization, and S. 376 contains such conforming language in Section 6.

COMSAT/Lockheed Martin Merger

To meet the challenges and opportunities created by the open, diverse and highly competitive environment that exists today for international telecommunications services, COMSAT wants to merge with Lockheed Martin Corporation. The proposed merger will bring together the two companies' complementary strengths and capabilities. Combining Lockheed Martin's resources and space expertise with COMSAT's established reputation and operating experience as a satellite services provider will create a new, more vigorous competitor and enable consumers to reap the benefits of the operating efficiencies created by the merger.

Lockheed Martin's purchase of COMSAT will not result in an increase in concentration or a reduction in the number of competitors, because Lockheed Martin currently does not offer satellite communications services to and from the United States in competition with COMSAT. With the explosive growth in the number and capacity of service providers in the international telecommunications market, including both satellite and undersea fiber cable operators, the effect of the merger on competition will be very positive. In particular, the merger will create an international telecommunications company that has the critical mass necessary to compete effectively against other industry giants, like AT&T/BT, MCI Worldcom, Loral, Hughes/PanAmSat, GE Americom and Teleglobe. This will undoubtedly promote U.S. technological leadership, and provide valuable employment opportunities in a high-growth sector of the economy.

The merger also will foster advanced satellite and ground segment technologies and turnkey telecommunications solutions that promise vast benefits to users in the United States and around the world, in both well-served and thin route markets. With privatization, it will complete the transformation of COMSAT into a normalized corporate entity with no special legislative status. It will help expedite the full privatization of INTELSAT by bringing Lockheed Martin's resources to bear in support of the objectives of S. 376.

At present, the Satellite Act prevents any company from acquiring a majority of COMSAT's stock. Thus, Congress must amend to the Act before the two companies can complete the proposed merger. However, both companies wanted Lockheed Martin to be able to obtain, as quickly as possible, the maximum stake in COMSAT consistent with existing law. This necessitated a two-step transaction. In step one, which is currently before the FCC, a Lockheed Martin subsidiary is seeking authority to acquire up to 49 percent of COMSAT as an "authorized carrier" under the Satellite Act. Approval of step one is within the FCC's jurisdiction under existing law. The full public benefits of the transaction can only be achieved, however, upon completion of step two, which is the merger itself. We therefore request that Congress act swiftly on S. 376 to allow the merger to be completed.

Section-by-Section Discussion of S. 376

Chairman Burns, as stated earlier, you should be commended for introducing legislation with firm measures to promote INTELSAT privatization, and for undertaking the long overdue modernization of the 1962 Satellite Act. Although efforts were attempted with H.R. 1872 (the bill passed by the House of Representatives last year), we believe S. 376 improves upon that initial groundwork in major respects.

As this Subcommittee may recall, the Administration announced its strong opposition to H.R. 1872 at your hearing last September, but well after the House vote. The Administration objected to the approach taken in H.R. 1872 for many reasons, chief among them that: (1) it would retard, not promote privatization, by imposing "unrealistic" conditions; (2) it was "likely to reduce, not increase, competition" and raise prices to consumers; (3) it would "have significant adverse national security and maritime safety implications", and (4) it could "provoke retaliation from U.S. trading partners" and be inconsistent with the United States' WTO obligations.

In opposing H.R. 1872, the Administration also observed, and COMSAT fully concurs, "that Congress was instrumental in establishing INTELSAT and Inmarsat and that it may want to address their privatization in legislation." Moreover, legislation is essential in order to update the 1962 Satellite Act. With that in mind, COMSAT now offers its views on specific provisions of S. 376.

INTELSAT Access to the U.S. Market

Section 603, "Restrictions Pending Privatization," will operate to prohibit INTELSAT from entering the U.S. market directly to provide any retail satellite communications services or space segment capacity to carriers or end users *until* a pro-competitive privatization is achieved. This provision is a major improvement to Section 641 of last year's House legislation, which would have required direct access to INTELSAT *before* privatization occurs. S. 376 appropriately uses U.S. market access as a lever to speed INTELSAT privatization, without harming U.S. consumers or competition in the process. COMSAT agrees with this approach for the following reasons.

INTELSAT currently does not sell satellite services directly in the U.S. retail market. Rather, it is a cost sharing international cooperative whose owners, the Signatories, jointly invest in the satellites and cover the expenses of operating the system. The Signatories in each country then sell the capacity they own on the system in their national retail markets. In the U.S., that investment responsibility and sales function are performed by COMSAT, the owner of the U.S. portion of the system.

As a U.S. corporation, COMSAT pays U.S. corporate income taxes on the revenue it generates from its INTELSAT business. As a U.S. common carrier, COMSAT is licensed and regulated by the FCC, and is fully subject to the U.S. antitrust laws in its common carrier activities. Additionally, as a U.S. publicly-traded corporation listed on the New York Stock Exchange, COMSAT is subject to the disclosure and filing requirements of U.S. securities laws.

None of this would apply to INTELSAT if it were permitted to directly access the U.S. market at the retail level *before* converting to a private corporation. As an intergovernmental international satellite organization, INTELSAT would be entirely exempt from U.S. taxation. Quite correctly, S. 376 recognizes that this would give INTELSAT an unfair competitive advantage over every other satellite operator doing business in the U.S. and paying U.S. taxes. It would also deprive the U.S. Treasury of millions of dollars of tax revenue now paid by COMSAT—creating, in effect, a U.S. taxpayer subsidy of INTELSAT.

As the recipient of this subsidy, INTELSAT would have no incentive to privatize more quickly if direct access were allowed now. It is this avoidance of U.S. tax expense that makes immediate direct access so attractive to the U.S. carriers. With no U.S. income, property or payroll taxes (on non-U.S. employees) to pay, INTELSAT could offer satellite capacity more cheaply than COMSAT, because its costs of production (building, customer support, operations, marketing, billing, etc.) would be lower. Is it any wonder why U.S. carriers and users find direct access so attractive? Yes, below-cost prices are appealing to U.S. consumers, but such "gains" are not attributable to any true efficiencies derived from direct access, but are an unfair advantage derived from INTELSAT's tax exempt status. For the Subcommittee's benefit, attached to my testimony is a study just completed in December 1998, by Professors Jerry R. Green and Hendrik S. Houthakker of Harvard University, and Johannes P. Pfeifenberger of The Brattle Group, which explain these points in greater detail. *See* Attachment 5,* "An Economic Assessment of the Risks and Benefits of Direct Access to INTELSAT in the United States" ("Direct Access Study").

But below-cost access is not the only problem with direct U.S. retail market entry by INTELSAT prior to full privatization. INTELSAT is also totally immune from FCC regulation and U.S. antitrust laws. The FCC recently held in its *DISCO II Order* (implementing the WTO Agreement) that privileges and immunities much narrower in scope than those INTELSAT enjoys would distort competition and constitute grounds for denying entry to the U.S. domestic market. The same reasoning would apply with even greater force to direct U.S. market entry by INTELSAT.

Section 603 properly recognizes that to reward INTELSAT and foreign signatories with direct U.S. market access now takes away much of their economic incentive to privatize. Why? Because if these foreign PTTs are given the right to sell INTELSAT services in the U.S. immediately and on preferential terms (as compared to COMSAT), no reason exists for many of those same Signatories to work hard to change the intergovernmental nature of the organization. Direct access does nothing to bring about change to INTELSAT's structure; instead, it reinforces it. INTELSAT would gain expanded U.S. distribution channels, foreign Signatories would have immediate access to the U.S. market, and privatization would come to a grinding halt. The debate for commercializing INTELSAT would shift to greater direct access versus full privatization. No matter what benefits the proponents of direct access claim, this is far too high a risk to take—especially since COMSAT's exclusive U.S.

---

* [Study maintained in the Subcommittee's files.]

Signatory access will end forever immediately upon privatization anyway. As Section 603 recognizes, the quicker INTELSAT privatizes, the sooner American consumers will realize the *true* economic benefits of *fair* competition. Significantly, S. 376 requires INTELSAT privatization by the end of 2001.

Even before the prospects for privatization were on the near horizon, the FCC consistently rejected direct access to INTELSAT, finding that it would neither increase competition nor lower prices to end users. To quote the U.S. Court of Appeals in affirming that Commission decision:

> [The FCC] concluded that direct access was not in the public interest; it would not save users money either by increasing efficiency [or] enhancing competition. . . . In assessing the likelihood that direct access could lower costs, the agency examined each category of costs on which COMSAT based its space segment tariff. The FCC concluded that each category was properly allocable to the tariff. . . . In the Commission's view, direct access probably would not reduce any of these costs; it would, rather, simply redistribute the costs among COMSAT and the carriers. *Western Union Int'l* v. *FCC,* 804 F.2d 1280, 1285 (D.C. Cir. 1986).

Moreover, the FCC decided against direct access at a time when COMSAT was the only international satellite company serving the U.S. Today, by contrast, there is significant facilities-based competition—both intermodal (undersea cable) and intramodal (separate satellite systems). As the FCC has stated again and again, in view of this robust competition, COMSAT's role as the U.S. provider of INTELSAT capacity accords us neither a monopoly nor market power. Thus, the need for direct access is even less than when it was first rejected by the FCC.

This brings us now to the issue of the infamous COMSAT "mark-ups" and the remedy of direct access. It is probably the most misunderstood issue of all. COMSAT's critics attempt to demonstrate that COMSAT engages in monopoly pricing by comparing the difference between what COMSAT charges its customers at FCC-tariffed rates and the payments we make to INTELSAT for capacity. Equating that to a mark-up in the ordinary meaning of the term is simply false.

As the Administration informed the House Commerce Committee, it is "misleading" to use the term mark-up in this context, because the amounts COMSAT pays to INTELSAT do not cover all of the costs of providing the U.S. portion of the INTELSAT space segment. For example, COMSAT is required by law to perform numerous duties on behalf of *all* users as the U.S. Signatory to INTELSAT, which generate expenses entirely separate from what INTELSAT charges COMSAT for only the satellite capacity. In addition, COMSAT necessarily bears other costs in providing INTELSAT satellite capacity (e.g., engineering, operational support, transaction costs, customer billing, satellite insurance). Those costs must obviously be taken into account before actual margins can be calculated.

However, based on a calculation which erroneously excludes the foregoing costs, proponents of direct access often cite a three-year-old average mark-up figure of 68 percent. The truth is that, after COMSAT's unavoidable and recoverable costs are properly considered, COMSAT's actual operating margins are about 38 percent, virtually identical to our satellite competitors.

Finally, it is often said that if 93 other countries have adopted direct access, why should the United States lag behind? There is a very simple answer. Direct access in other countries is used as a means to address a problem that does not exist in the U.S.—that is, complete control of all telecommunications by a single PTT or former PTT. Unlike COMSAT, these PTTs provide local exchange telephone service, domestic long distance service, and international service. Unlike COMSAT, they own capacity in fiber optic cables and other satellite systems. Unlike COMSAT, they control earth stations that access INTELSAT. The only way to break that bottleneck and promote alternatives for international services in those countries is to allow new entrants to access INTELSAT satellite capacity directly, thus bypassing the PTT. In the United States, we did it right initially. COMSAT was specifically created to prevent the dominant U.S. carrier, AT&T, from controlling *both* satellites and cables. Today, U.S. users do not lack for choices for sending traffic overseas. Other countries are just trying to catch up!

A few proponents of direct access attempt to make much of the fact that COMSAT subsidiaries operating in Argentina and the U.K. take advantage of direct access while COMSAT opposes its implementation in the U.S. Unlike other countries in which the Signatory is a telecommunications service provider, the Signatory in Argentina is its regulatory authority, an agency similar to the FCC. Thus, because the Signatory is not a service provider, there is no other way in Argentina to obtain space segment capacity except through direct access.

The U.K. is another aberration. In stark contrast to COMSAT, and even though BT is the second largest owner of INTELSAT, its investment share is only 5.7 percent compared to 18 percent for COMSAT. Unlike COMSAT, which is an independent supplier of space segment to U.S. carriers, BT simply uses the capacity itself as part of the retail services it offers to end users. Moreover, BT is a $26 billion company with a local exchange, long distance, and international business (which is about to join with AT&T). BT also owns capacity in undersea fiber optic cables and other satellite systems.

Given these enormous differences, for BT to assert that it should be the model for the U.S. to follow on direct access is nonsensical and absurd. Offering capacity that COMSAT owns on the INTELSAT system is our company's primary business (and not a negligible investment as with BT), and therefore, the practical consequences of direct access here in the U.S. are not comparable to the U.K. situation at all.

Service Restrictions

Section 603(b) of S. 376 would prohibit INTELSAT and COMSAT from providing direct-to-home satellite services, direct broadcast satellite services, satellite digital audio radio services, and broadband satellite communications services in the Ka-band. These are some of the most promising new markets for the satellite industry, and many of our competitors are already prospering in these markets.

As a general rule, efforts to exclude one firm from participating in growth markets where that firm lacks market power are anti-consumer and anti-competitive. In this instance, however, we believe that Section 603 (b) is a significant improvement over the broad punitive service restrictions contained in the House-passed bill of last year, H.R. 1872. That bill provided that, during the transition to privatization, COMSAT would be prohibited from providing many of its *existing* services to U.S. consumers. H.R. 1872 defined those prohibited services to include high-speed data transmission and Internet access. COMSAT has already contracted with INTELSAT for capacity to provide these services and is, in fact, actively providing them today. This restriction, for example, would completely deprive consumers of COMSAT's new Linkway 2000$_{TM}$ technology for Internet applications, as described above.

The Administration squarely opposed the House bill's imposition of service restrictions, finding that they are "likely to reduce, not increase, competition in the U.S. market for satellite telecommunications services." In fact, in commenting on the service restrictions that would be imposed by H.R. 1872, the Administration noted that:

> [T]he bill may effectively eliminate two important service providers from the most rapidly growing markets for satellite services—markets which may be served by only a small number of firms, given the inherent structure of this industry (high fixed costs and large economies of scale). The result: fewer options and higher prices to U.S. consumers, including the federal government. Although the bill includes some protections if few alternative providers exist, they are unlikely to be sufficient to ensure that American consumers are not harmed.

Executive Branch Leadership

S. 376 is superior to the House-passed bill because it properly vests the leadership role for achieving a pro-competitive privatization in the President of the United States. The President has the Constitutional responsibility for treaty-making and for representing the United States in international fora, and INTELSAT is a treaty-based entity whose restructuring requires extensive "give-and-take" with foreign governments.

The Executive Branch has consistently taken the lead role in advocating and implementing U.S. policies concerning INTELSAT—from its creation in the 1960s, to the treaty amendments in the 1970s, to the instructional process, which the Executive Branch coordinates before every INTELSAT Board meeting. The Executive Branch, through the Antitrust Division of the Justice Department, also has taken an active part in ensuring that the privatization of INTELSAT does not harm competition. Thus, a strategy employing Presidential leadership for handling the privatization negotiations and associated competition issues is sensible and constitutionally sound. In fact, it has been through the strong efforts of the Executive Branch that the successful full privatization of Inmarsat was achieved, and the divestiture of New Skies into a new private firm was realized.

Both S. 376 and the House-passed bill provide the FCC with authority to condition or deny applications by a privatized INTELSAT to provide satellite communications to and from the U.S. But again, only S. 376 does so effectively because it clearly states that, in making such a public interest determination, the FCC is bound

by the President's certification that entry by the privatized entity would not distort competition in the U.S. market. This provision makes it clear that the FCC should not be able to undermine the international negotiating authority of the President, or to factor its views of the negotiated results into post-privatization licensing decisions. The Administration has also criticized the House-passed bill on the basis of these issues. Specifically, it stated:

> Provisions of [the House-passed bill] purport to require the President to adopt specific positions on INTELSAT and Inmarsat privatization that would make international negotiations unwieldy and cumbersome, thus frustrating the President's ability to conduct foreign policy effectively. The bill also gives the FCC exclusive authority to determine if the outcome of multilateral negotiations is suitable—a determination that should be made by the FCC in consultation with the Executive Branch.

Let us be absolutely clear on this point. COMSAT has no objections to the maintenance of the FCC's traditional public interest role in the regulation and licensing of satellite carriers doing business in the U.S. COMSAT's concerns are over efforts to expand that role into an area that normally is the preserve of the President of the United States—the reformation of an international treaty organization.

Privileges and Immunities

Section 621, titled "Elimination of Privileges and Immunities," provides that COMSAT shall not have any immunity in its role as the U.S. Signatory to INTELSAT, except: (1) for those actions taken at the direction of the U.S. Government; (2) for actions taken in fulfilling obligations under the INTELSAT Operating Agreement; (3) for INTELSAT Signatory activities which COMSAT does not support; and (4) in accordance with any other exceptions made by the President of the United States. Additionally, it provides that any liability of COMSAT shall be limited to the portion of any judgment that corresponds to COMSAT's percentage of responsibility. Finally, the elimination of privileges and immunities by this section is prospective from the date of enactment of the bill. With privatization, COMSAT's Signatory role will end and all residual privileges and immunities will terminate.

COMSAT supports this removal of privileges and immunities. This measure is fully responsive to those who maintain that COMSAT's existing limited immunity as the U.S. Signatory somehow gives the company an unfair advantage in the marketplace. As the courts have consistently ruled, when COMSAT competes in the market with other service providers, it has NO antitrust immunities. Moreover, when COMSAT acts in its Signatory role within INTELSAT, three agencies of the U.S. Government (State, Commerce and FCC) are sitting right there with us, and possess the authority to instruct COMSAT as to how to vote, or what position to take, on any issue. That is not a situation conducive to anticompetitive conduct. Indeed, the enormous success of our competitors belies the notion that COMSAT's limited immunity as the U.S. Signatory translates into any market advantages whatsoever.

Nevertheless, COMSAT is prepared to relinquish this Signatory immunity, subject to the reasonable safeguards enumerated in S. 376. Obviously, COMSAT should not be held liable for following the instructions of the U.S. Government at INTELSAT meetings. Nor would it be fair to expose COMSAT to liability if INTELSAT takes some action over the objections and opposing vote of COMSAT. We should only be held responsible for our own volitional actions, and S. 376 eliminates any possible doubts about that.

The draconian approach of the House-passed bill, H.R. 1872, which does not contain comparable safeguards, is both unfair and unworkable. For the reasons stated above, COMSAT supports the provisions of S. 376 clarifying that it is not immune from suit or legal process with respect to its volitional, affirmative acts as the U.S. Signatory to INTELSAT, pending privatization. This provision is rational and fully consistent with the overall pro-competitive approach taken by S. 376.

Abrogation of Contracts

Section 622 of S. 376 expressly prohibits the nullification of COMSAT's contracts that are in effect on the date of enactment of this bill. COMSAT believes this provision is necessary and proper given the history surrounding these contracts, as explained below.

Section 622 in S. 376 stands in stark contrast to the so-called "fresh look" provision of the House-passed bill, which would have the U.S. Congress decide that COMSAT's customers should be free to walk away from the business commitments they freely entered into with COMSAT, all in exchange for significant COMSAT rate reductions. Based on those contracts, COMSAT in turn made long term, non-

cancelable capacity commitments to INTELSAT to secure the lowest possible rates for our customers (and which are reflected in the steadily declining prices COMSAT charges under those contracts). If "fresh look" were adopted, COMSAT would therefore be left bearing the cost of the INTELSAT investment necessary to service those contracts. Under the Fifth Amendment to the Constitution, Congress is prohibited from taking private property without just compensation. To do so in the manner proposed by the House bill would clearly constitute a "taking", and expose the U.S. Treasury to significant damages claims.

The proponents of "fresh look" point to a handful of cases where companies adjudicated to hold unlawful monopolies were required to let other parties opt out of contracts that were being used to perpetuate those monopolies. In this case, however, a federal court has expressly found that COMSAT's long-term carrier contracts are *not* derived from an unlawful monopoly or exercise of monopoly market power, as had been alleged by PanAmSat. Specifically, in 1996, the U.S. District Court for the Southern District of New York held:

> [A]lthough the record does reflect that Comsat entered long-term contracts with many common carriers, nothing in the record suggests that Comsat secured any of the contracts by means of any anticompetitive acts against PAS. *On the contrary, the record suggests that for their own reasons, the common carriers elected to secure long-term deals with Comsat only after considering and rejecting offers from PAS. (emphasis added)*

The FCC reached the identical conclusion. When COMSAT petitioned the FCC for non-dominant status in 1997, Hughes/PanAmSat again raised the issue of COMSAT's long-term contracts, claiming they "locked up" the market and restricted competition. Hughes/PanAmSat and others urged the Commission not to grant COMSAT non-dominant status without a condition imposing "fresh look". The FCC disagreed, and it is worth reading closely the reasoning behind this decision.

> We agree with COMSAT for the reasons stated below. *COMSAT's long-term contracts do not impede COMSAT's customers from switching service providers.* It is true that AT&T and MCI have entered into contracts with COMSAT that expire in 2003. The record lacks evidence of any other long-term contracts between COMSAT and its customers for switched voice service. COMSAT estimates that the three contracts represent approximately 25 percent of the U.S. switched voice service market. Given the growth rate in the switched voice service market, *AT&T's and MCI's long-term contracts are likely to represent an even smaller share of this market today.* Additionally, the contracts only obligate AT&T and MCI to transmit part of their international switched voice traffic using COMSAT. *Based on our review of these contracts, we conclude that the contracts permit AT&T and MCI to use COMSAT's competitors for services.* Therefore, notwithstanding these long-term contracts, we confirm the finding in our *August 1996 Order* that COMSAT's switched voice customers are sophisticated customers possessing significant bargaining power giving them the flexibility to route a significant portion of their switched voice traffic to their own transmission facilities or those of alternative carriers as they choose (emphasis added).

In light of these findings, it would be unprecedented for Congress to enact a statute mandating the abrogation of these very same contracts. It would be tantamount to a Congressional determination that COMSAT's long-term contracts are anticompetitive. However, unlike the Courts or the FCC, Congress does not adjudicate disputes among private parties as a matter of constitutional separation of powers. Thus, we submit respectfully that any Congressional determination to simply nullify these contracts by legislative act would amount to an unconstitutional bill of attainder.

Application of "fresh look" in this case is unsupportable from a policy perspective as well. COMSAT negotiated the subject long-term contracts with the three largest long distance companies (*i.e.* AT&T, MCI and Sprint) to carry international traffic using INTELSAT's facilities. These contracts were designed to guarantee a steady stream of traffic in the face of increased competition from other satellite systems and fiber optic cables. In return for long-term traffic commitments, COMSAT dropped its prices considerably. This is no different than what happens every day in many commercial settings, whether its lower rates for multi-year magazine subscriptions or season tickets to sporting events. To be sure, these carriers themselves offer their customers reduced tariff rates in exchange for longer service commitments.

COMSAT's long-term carrier contracts, which are non-exclusive, were renegotiated in 1993 and 1994, subsequently modified, and all at a time when competing

satellite systems were permitted to—and did—bid for this traffic. Based on the long-term guarantee of traffic resulting from COMSAT's carrier-contracts, COMSAT contracted with INTELSAT for the capacity to handle that traffic and designed satellites to assure the carrier traffic could be accommodated. COMSAT's obligations with INTELSAT would remain in force, even if the U.S. carrier contracts that formed the basis for the commitments we made to INTELSAT were struck down by Congress. COMSAT's liability to INTELSAT currently exceeds $500 million over the life of those contracts, and the investments in satellites built with capacity to accommodate the carriers would be stranded. Under these circumstances, "fresh look" is completely unjustified, and as noted above, would result in the U.S. government being liable for substantial damages to COMSAT for taking our property without just compensation.

Other Issues

While S. 376 is a fairly well-balanced bill, COMSAT does have concerns with some of its provisions. First, we are concerned with the requirement that if INTELSAT fails to privatize fully by January 1, 2002, the U.S. must withdraw as a party to the INTELSAT organization. We believe that this is too extreme a sanction for INTELSAT's failure to privatize fully by the stated deadline. It is key that the United States maintain a leadership role in the pro-competitive privatization of INTELSAT. To do so effectively, it must maintain its commitment and active involvement throughout the entire process—even if that process should be delayed along the way.

The withdrawal provision could actually have the perverse effect of creating incentives for INTELSAT's satellite competitors to attempt to find ways to delay privatization by raising frivolous—but time consuming—issues along the way. Think about it. If the deadline is not met, and COMSAT must withdraw from INTELSAT, what happens to all the traffic now carried by COMSAT? It necessarily will have to be reallocated to COMSAT's competitors, and/or flow North or South to foreign Signatories in Canada and Mexico, respectively. U.S. legislation to privatize INTELSAT should not include incentives to penalize an American company for dilatory actions of foreign Signatories.

Mandatory withdrawal at a time certain is also counterproductive. If the Congress wants INTELSAT to privatize by a date certain, it is necessary for U.S. negotiators to stay actively engaged in the process. If the process slips and is not fully completed by January 1, 2002, and the U.S. disengages, we only hurt ourselves and the U.S. consumers that rely on the system, including national security users. COMSAT respectfully submits that the prospect of denying U.S. retail market access, and the restrictions on service expansion pending privatization set forth in S. 376, are sufficient incentives to privatize without a mandatory withdrawal provision.

COMSAT was also disappointed to observe that S. 376 does not contain the regulatory parity provision contained in S. 2365 in the 105th Congress. It is imperative that, in a competitive marketplace, all satellite system operators and satellite service providers compete against each other based on a common set of rules. Contrary to claims being made by some competitors, this would not necessarily mean more regulation for them—just the same, equal framework applied to all. We strongly urge that this issue be revisited during the debate on this bill.

Finally, we have some concerns over the language used in Section 631, which is a new law intended to prevent the warehousing of orbital slots and spectrum. COMSAT fully supports this concept. No satellite provider should be able to reserve orbital slots with "paper" satellite filings or reserve spectrum not required for operation of their systems. For example, Loral Orion has tied up an orbital slot for 14 years without any use, a problem recently brought to the FCC's attention by another U.S. satellite competitor, Columbia Communications. In contrast, INTELSAT has acted responsibly and de-registered seven of its unused orbital slots in December, 1998.

Unfortunately, Section 631 is too vague to achieve its stated goal of preventing warehousing. It states that operators must "make efficient and timely use" of orbital slots and spectrum, and if such "assurances cannot be provided", satellite operators "shall" relinquish their rights to these resources. As a practical matter, whether one makes "efficient use" of a slot or spectrum is far too subjective given the penalty for non-compliance. Does efficient use require comparisons to other providers? Does it favor operators with earth stations employing digital compression technologies or that employ collocation within orbital slots? Does it mean that companies with older satellites in-orbit must relinquish a slot if another company with newer satellites, or satellites having greater capacity, seek the slot? Should inclined orbit satellites be required to be de-orbited before their useful life has expired?

We respectfully submit that the vagueness of the language as drafted in Section 631 will ultimately defeat its purpose. It needs to be reworked to incorporate a more objective test. One approach might be for the system operator to bear the burden of demonstrating that an orbital slot or spectrum requirement is necessary and appropriate for actual system operations and planning. The International Telecommunication Union ("ITU") is also in the midst of resolving this issue with "due diligence" procedures that will prevent warehousing. Measures being considered include a time limit on filings and evidence of a launch service contract.

Conclusion

Mr. Chairman, I would like to thank the Subcommittee again for holding this hearing today and for allowing COMSAT to present its views on S. 376. We are confident that passage of this legislation will spur the timely and pro-competitive privatization of INTELSAT, while allowing the benefits of COMSAT's merger with Lockheed Martin to be realized as quickly as possible. Above all, the public interest in a deregulated and even more competitive international satellite industry is most certainly achievable in the near term with this legislation.

[Attachments 1 to 4 are as follows:]

Attachment 1

DATE: February 26, 1999

For immediate Release

COMSAT LOWERS RATES ON THIN ROUTE SERVICES

—Telecommunications Carriers and Broadcasters

Receive 4% Rate Reduction and Guaranteed Rate Caps—

BETHESDA, Md.—COMSAT Corporation today announced it will reduce rates on a majority of its thin route services provided over the INTELSAT satellite system. These reductions, which take effect Wednesday, March 3, will benefit telecommunications carriers and broadcasters using public switched telephony services on certain routes and occasional use broadcast services.

COMSAT is reducing rates by 4 percent for public switched telecommunications services on thin routes—countries served by COMSAT with low volumes of telecommunications traffic to and from the United States. The company will also cap prices for thin routes at or below rates charged on heavily trafficked routes. In addition, COMSAT is reducing rates by 4 percent for occasional use video services on all routes.

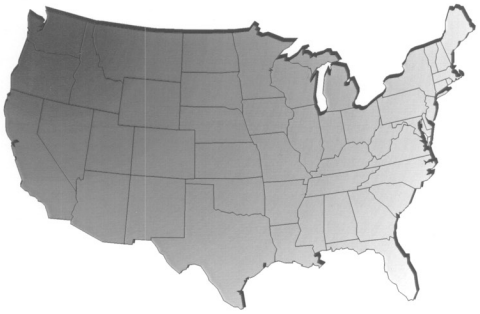
"COMSAT is the only U.S. satellite service provider committed to providing the same level of high quality service to both developed and developing countries throughout the world," said John Mattingly, president, COMSAT Satellite Services. "These rate reductions guarantee that our customers in developing countries will continue receiving the same service and price benefits enjoyed by COMSAT's customers in locations with higher service volumes."

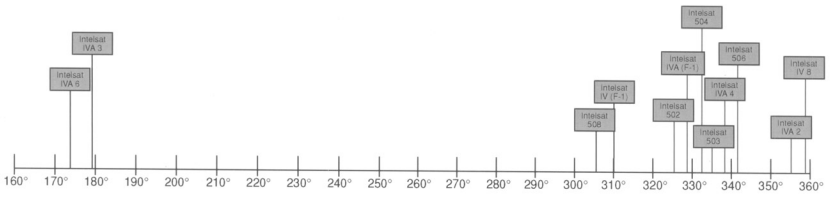
COMSAT Corporation (NYSE:CQ), headquartered in Bethesda, Md., is a global provider of satellite services and digital networking services and technology.

* * * * *

Attachment 2

Access to International Fiber Cable and Satellite Facilities by U.S. Users (1984)



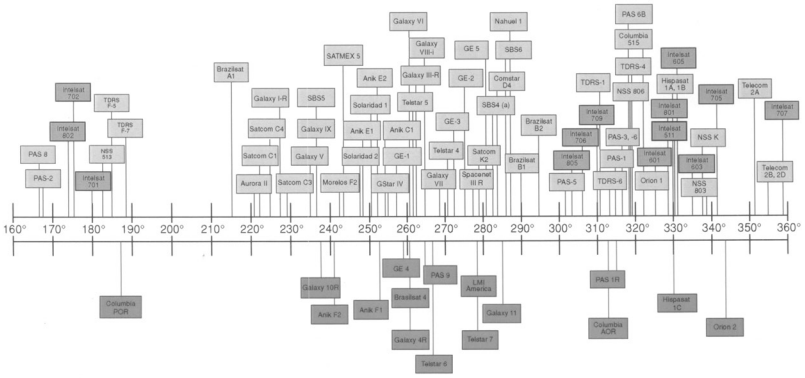


SOURCE: COMSAT

LEGEND: Access to COMSAT/INTELSAT facilities

Attachment 3

Access to International Fiber Cable and Satellite Facilities by U.S. Users (1998)



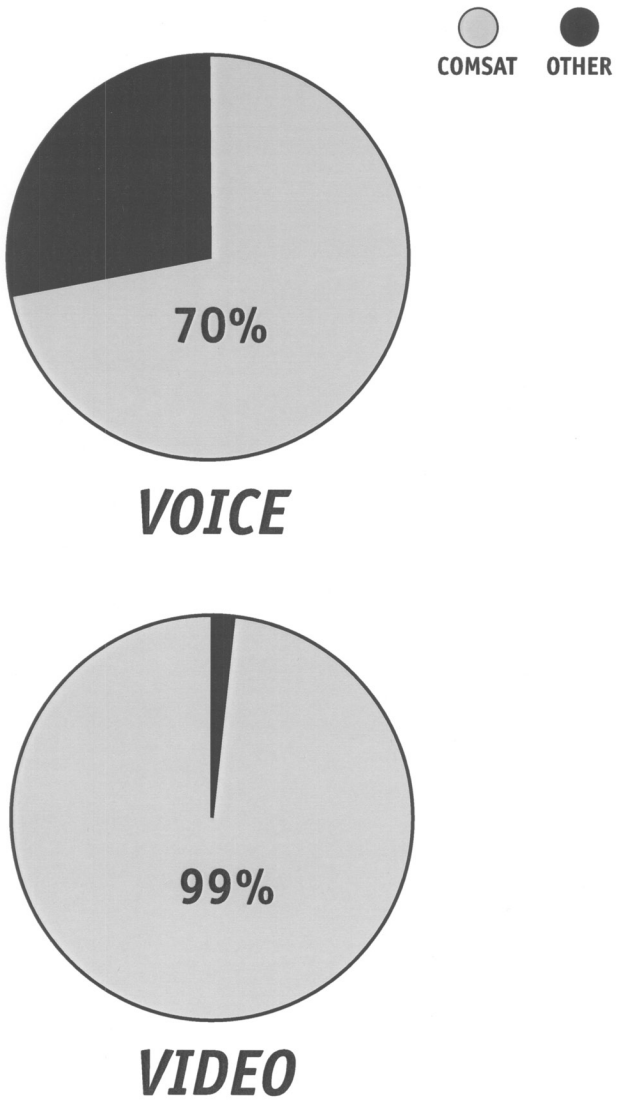
SOURCES: 1998 Satellite Industry Directory, FCC Applications, The Satellite Encyclopedia, SATCO DX, trade press, company press releases, webpages, KMI Corporation, and The Brattle Group

LEGEND

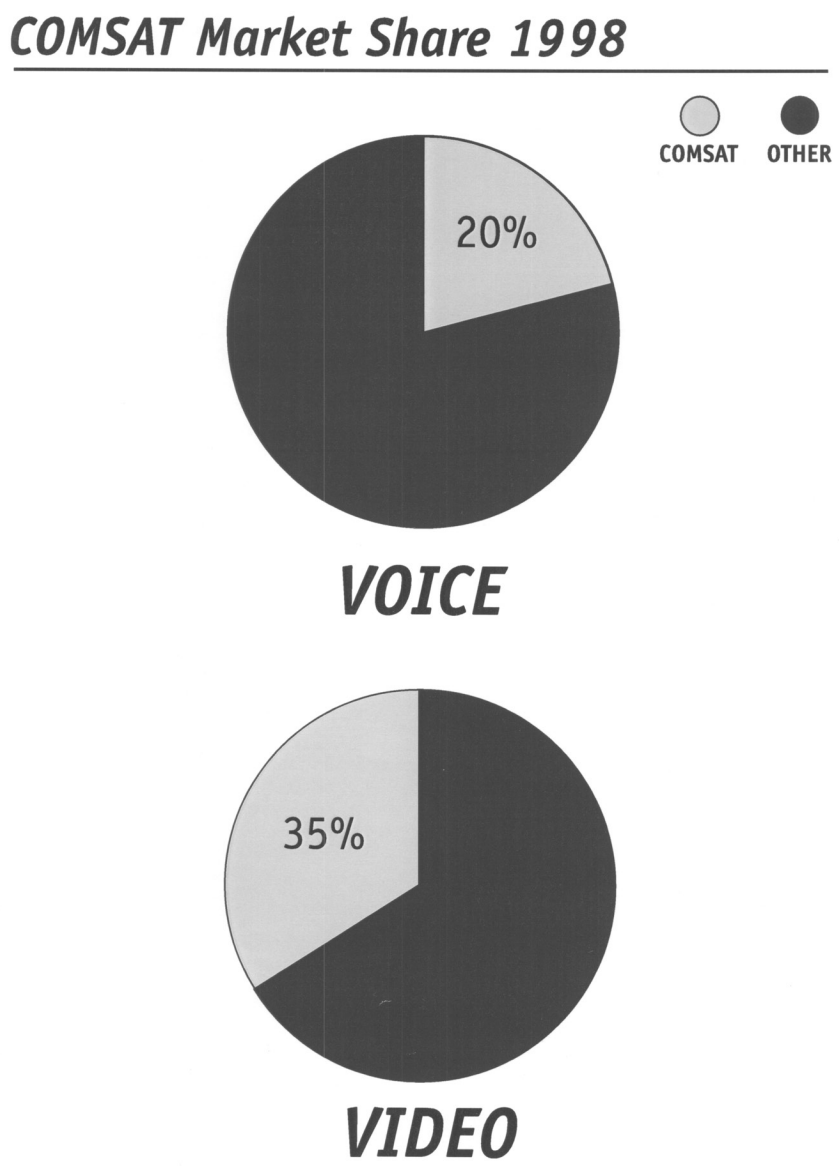
Operable by EOY 1998

Applied or under construction (Operable after 1998)

COMSAT Market Share 1984



Attachment 4



Senator BURNS. Thank you very much, Ms. Alewine.

We have been joined by Senator Breaux. Do you have an opening statement? We have two more witnesses to hear from.

STATEMENT OF HON. JOHN B. BREAUX
U.S. SENATOR FROM LOUISIANA

Senator BREAUX. No, thank you, Mr. Chairman.

Senator BURNS. We have now Mr. John Sponyoe, who is CEO of Lockheed Martin. Good afternoon, and thank you for coming today.

Mr. SPONYOE. Good afternoon.

Senator BURNS. By the way, I will tell you that your entire statement will be made part of the record, all of you.

STATEMENT OF JOHN SPONYOE, CHIEF EXECUTIVE OFFICER, LOCKHEED MARTIN GLOBAL TELECOMMUNICATIONS

Mr. SPONYOE. Mr. Chairman, I thank you and the other members of the committee for the opportunity to present Lockheed Martin's views on the ORBIT legislation.

Let me say at the outset that Lockheed Martin applauds and supports this legislation. It is a well-reasoned, balanced and effective blueprint for achieving critical national objectives. This, in a market segment in which the U.S. always has demonstrated leadership and which our country now has the opportunity to strengthen its competitive stature.

ORBIT also will lead to another critical benefit—choices for customers. We acknowledge that ORBIT represents the enabling legislation for us to complete our combination with COMSAT. But let me give you a much broader perspective on why this combination is in the best interest of all parties. ORBIT will allow Lockheed Martin to transition COMSAT into a viable, dynamic presence in the world marketplace, a marketplace that is expanding at a rate nothing short of amazing.

By marrying our technological, financial, entrepreneurial assets with COMSAT's experience as a commercial service provider and its ownership interest in a global satellite fleet, we can provide new technologies and new services. Equally important, we can deliver highly competitive services and better value for the U.S. Government and commercial customers. Together, we are fully confident this combination will increase U.S. competitiveness and ultimately retain and grow U.S. jobs.

Let me assure the committee, Lockheed Martin is not making a significant investment in order to preserve the status quo. Far from it. We are prepared to invest nearly $3 billion in COMSAT, and become the U.S. INTELSAT signatory because we believe our objectives and those of this committee and the administration are identical. We share a belief in pro-competitive legislation and the privatization of INTELSAT and the global telecommunications marketplace. The INTELSAT in which Lockheed Martin would acquire an equity position is on a privatization path to become a viable commercial system, operating in a manner indistinguishable from any other commercial enterprise.

This is why we see our combination with COMSAT as a means for achieving not only our own business objectives, but also major U.S. policy objectives. We view your ORBIT legislation as the right way to achieve these objectives, and we are keenly interested in passage of this legislation early in this session of Congress.

The INTELSAT privatization process will benefit directly and immediately from this legislation, which will serve as a guide and means for encouraging true, pro-competitive privatization, using a clearly defined timetable. In our view, this process should be completed no later than the year 2002, and must, at a minimum, entail

termination of INTELSAT's intergovernmental status and its privileges and immunities, such as tax exemption and antitrust immunity, and operate fully subject to laws and regulations that apply to all other commercial systems operators. We also support ORBIT's requirement that the privatization process be reviewed by the executive branch on the basis of relevant, competitive criteria set forth in statute, with the assistance of the FCC.

Mr. Chairman, you and your committee are confronted with two simple but vital choices: encourage the transition of COMSAT toward becoming an integral element in the dynamic future of commercial telecommunications, or allow COMSAT to wither as a result of the tactics of its competitors.

A quick scan of a newspaper will tell you that the telecommunications industry is undergoing a dramatic consolidation. Every week, new mergers and global alliances within our industry are redefining the marketplace. This consolidation has, and will continue, to adversely affect COMSAT's competitive position. COMSAT needs critical mass to equitably compete in the global telecommunications marketplace. COMSAT needs continued capital investment to expand its international digital networking business. COMSAT needs freedom from the constraints that forestall its ability to fully commercialize its technological assets.

COMSAT's principal assets, combined with Lockheed Martin's financial and other resources, will create a formidable new American competitor in the global telecommunications marketplace. Many of our competitors have greater financial resources and global presence and are without similar statutory ownership, governance restrictions or comparable and burdensome regulatory oversight.

Our competitors, many with billions and billions of dollars in annual revenues, versus COMSAT's $600 million, already have extensive dedicated satellite systems in operation. That is why I find it particularly ironic that our competitors voice opposition to this merger by characterizing COMSAT as a monopoly. Instead, this merger will be good news for conditions in the U.S. and elsewhere. It will provide a level playing field. It will provide customers with more choices among suppliers. It will provide greater access to competitively priced services.

Mr. Chairman, as you may know, I am relatively new to the telecommunications business. Recently, I had the opportunity to give a presentation of our business plan to a group of security analysts in Phoenix. At the conclusion of my remarks, I was followed on the panel by Mr. Fred Lanman, CEO of Hughes/PanAmSat. In his opening statement, he half jokingly commented on my presentation, saying that PanAmSat is already where Lockheed Martin Global Telecommunications wants to be in 5 years.

Mr. Chairman, I would like to say all we are asking for today is the opportunity to give Hughes/PanAmSat and our other competitors a run for their money. We believe the ORBIT legislation provides that opportunity.

Thank you for inviting me here today, and I look forward to addressing any questions you may have. Thank you.

[The prepared statement of Mr. Sponyoe follows:]

PREPARED STATEMENT OF JOHN SPONYOE, CHIEF EXECUTIVE OFFICER, LOCKHEED MARTIN GLOBAL TELECOMMUNICATIONS

Mr. Chairman, I would like to thank you and the other members of the Committee for the opportunity to present Lockheed Martin's views on the ORBIT legislation that you have introduced, and that your colleagues, Chairman McCain and Senators Bryan, Brownback, Cleland, and Dorgan have co-sponsored. Lockheed Martin commends the Subcommittee for its willingness to undertake a timely and much-needed modernization of the 1962 Satellite Act, with a view toward promoting the benefits of privatization and increased competition in the global satellite services marketplace. Lockheed Martin applauds and supports this legislation—it is a well-reasoned, balanced and effective approach to achieving critical US objectives in a marketplace in which the US always has demonstrated leadership, and in which the US now has the opportunity to do so again.

Mr. Chairman, Lockheed Martin has been a prominent player in the satellite industry for as long as there has been an industry—we have developed, built, and launched more satellites than any other company in the world. But both the downturn in post-Cold War defense spending *and* the explosive growth in global telecommunications and information markets, have combined to create a strong impetus for LM to evolve even more quickly into a new competitive provider of commercial satellite and telecommunication services. This commercial objective is very important for us and advances the Department of Defense's policy on diversification of its contractor base. At the same time, our government customers are themselves becoming increasingly reliant upon commercial communications systems and services to meet national security needs. Thus, the question for us is clearly not whether to enter the commercial telecommunications services market, but how best to do it?

Lockheed Martin began its commercial satellite services initiative 3½ years ago when we filed an FCC application for authorization to build and operate Astrolink—a satellite system that will make cost-efficient, advanced, broadband communications readily accessible to consumers regardless of location—urban or rural, populated or under-served remote areas. We also have moved quickly to pursue other business opportunities with partners in the US and abroad (LMI, GE Satco, AceS). Several months ago, our Corporation formed a separate Global Telecommunications subsidiary for the specific purpose of focusing our business efforts in the commercial telecom services area. Soon thereafter we announced our intention to acquire Comsat Corporation, a publicly-traded US company. The rationale for this acquisition is very straightforward—to marry our own technological and entrepreneurial assets with Comsat's 37 years of experience as a provider of satellite services.

Mr. Chairman, you may be tempted to ask, given the challenges that confront us, why Lockheed Martin has chosen to pursue a business plan that requires an enabling act of Congress in addition to the normal regulatory approvals. The answer is simple: the Lockheed Martin/COMSAT combination is good for our two companies—and very good for market competition more broadly. Within the next five years, we intend to be a leading provider of worldwide telecommunications services via both satellite and terrestrial infrastructures. As a consequence, our support for satellite reform legislation is driven by two major considerations: First, we are poised to make a $2.7 billion investment in COMSAT. Let me assure the Committee that we are not pursuing this investment for the purpose of preserving the *status quo* at COMSAT—far from it. We want to buy COMSAT, transform it into a normal US commercial business operation, and integrate it into LMGT to form a strong new competitive entrant in the global telecommunications services marketplace.

Second, the Comsat combination will also give us a significant interest in INTELSAT. Mr. Chairman, I can assure you that, as a businessman, we have no intention of buying COMSAT to acquire an 18% share either in a "mini-United Nations" or of a diminishing asset. With all due respect to my colleagues seated with me today, whatever perceived advantages INTELSAT may or may not have in its current incarnation, these advantages are certainly not reflected in its steadily decreasing market share. By the end of this year, the GM/Hughes/PAS satellite fleet will be far larger than INTELSAT, and far better positioned to compete in commercial telecom growth markets. Indeed, INTELSAT's current position in the US-international market vis-a-vis other satellite and terrestrial competitors is so far from anything that could be accurately termed "dominant" that I have to wonder whether its current structure might not pose a greater threat to itself than to its competitors. The INTELSAT Lockheed Martin wants to be part of is one that can soon be a viable commercial system that operates in a manner indistinguishable from any other commercial system. That's what this committee and the Administration want as well and are pursuing. This is why we see our combination with COMSAT as a

means for achieving not only our own business objectives, but major US policy objectives as well.

We view your ORBIT bill as an ideal way to achieve our mutual objectives and as a result, Lockheed Martin is keenly interested in the passage of this legislation early in this session of Congress. We need congressional action in order to acquire and reshape COMSAT, enabling the emergence of a vibrant competitor. ORBIT legislation appropriately removes outdated ownership caps and governance provisions upon enactment, and similarly prohibits government intrusion into COMSAT's competitively won contracts with its corporate customers.

Congress is faced with some fairly simple, but important, choices: you can enhance competition by allowing COMSAT to be acquired and repositioned so that it can move away from its static past and play a key role in the dynamic future of the commercial satellite industry; or you can diminish competition by allowing COMSAT to languish as a result of the delaying tactics of its competitors—companies, such as Hughes, a subsidiary of General Motors and itself a parent corporation to several satellite systems including PanAmSat, DirecTV, and—if they continue to consolidate-USSB and PrimeStar/Tempo. These companies dwarf COMSAT in size [Note: Both GM and GE are larger companies than LMC], have greater financial resources, considerable global presence, no statutory ownership or governance restrictions, and no comparable and burdensome regulatory oversight. Moreover, they and others already have extensive, dedicated satellite systems in operation—COMSAT does not and neither does Lockheed Martin. Thus, the Lockheed Martin/ COMSAT combination—if allowed to proceed—can only enhance healthy competition in the global marketplace: That may not be good news for the established players, but—Mr. Chairman—it *is* good news for consumers in this country and elsewhere. They will have more choices among suppliers, and greater access to competitively-priced services, which I know lies at the heart of your satellite reform legislative efforts.

We also firmly believe that the INTELSAT privatization process can benefit directly from legislation that defines the US view of what constitutes a pro-competitive INTELSAT privatization. Congress also has the opportunity to act quickly and send a firm but reasonable signal to our the US's partners in INTELSAT about US determination to see the organization thoroughly and quickly privatized. The privatization process is already taking shape and Congress has a unique opportunity to have a positive impact on it. For years, some critics have maintained that INTELSAT's intergovernmental character gives it an unfair advantage in the global marketplace. ORBIT recognizes this by appropriately withholding further expansion of INTELSAT in the US marketplace until it sheds its intergovernmental status through a pro-competitive privatization—ORBIT uses expanded access to the US market as the proverbial carrot to INTELSAT. At the same time, INTELSAT management and some many Signatories understand that these very same intergovernmental attributes are now a handicap (particularly in getting Signatories to make the necessary capital investment commitments) in a dynamic and increasingly competitive global market. As a result, there is pressure from within and without INTELSAT to evolve quickly from an inter-governmental treaty-based organization into a true commercial company, one that is indistinguishable from other competitors in the global satellite services market. I firmly believe that the marketplace imperatives that compel this transformation are well understood by INTELSAT management and its leading Signatories. The vision of privatization set forth in the Orbit legislation also is in the US interest in that it ensures continued competition among global satellite systems—rather than market dominance by any single system—not INTELSAT, GM/Hughes / PAS, GE, Loral or anyone else. One of the most effective ways to promote long-term facilities-based competition in the international satellite telecommunications market is to put an end to the conditions that both insulate and handicap INTELSAT by spurring the pro-competitive privatization of INTELSAT.

Legislation, such as ORBIT, would serve as an effective, but appropriate, means for encouraging a *bona fide* privatization. Specifically, we support the bill's clearly defined timetable for privatization: the process should be completed by no later than, but preferably prior to, 2002. Speed is not the only goal, however. Privatization must transform the this politicized and bureaucratic organization in a pro-competitive manner. In Lockheed Martin's view, *pro-competitive* privatization must entail both termination of INTELSAT's intergovernmental status and its privileges and immunities, such as tax exemption and anti-trust immunity, and operation in the marketplace fully subject to the laws and regulations applicable to other commercial satellite system operators. Why do we believe this? Because only upon its fully fledged privatization will INTELSAT—and its owners—be genuinely subjected to the positive discipline of the marketplace. And this, we believe, will make the or-

ganization more efficient and ultimately more profitable. INTELSAT would also be required, as a condition of access to the US, to not enter into any arrangement to secure exclusive access to any national telecom market. The privatized post-INTELSAT entity would then be permitted, subject to the same FCC regulatory approval as its competitors, to expand its access to the US market in terms of customers and service offerings.

Lockheed Martin is committed to using its prospective role as an INTELSAT stakeholder to vigorously support and advance the US objectives for rapid and complete privatization of the organization. Quite frankly, our business plans only entail a future relationship with a fully privatized INTELSAT, and we will, by virtue of our $2.7 billion investment in COMSAT, probably be the most highly motivated entity—in either the public or private sectors—to bring about such a result as quickly and as thoroughly as possible.

However, all of us in this debate—private and public sector participants—must carefully address the best way for the US Government to exercise a constructive role in a multinational, intergovernmental setting like INTELSAT. The US, as you fully know, played a key role in the formation of INTELSAT, and it was in furtherance of important US foreign policy goals that our Government worked to have so many countries join in this US-led satellite communications initiative. As a consequence of the US's historic role, the US needs to remain mindful of the multilateral nature of INTELSAT privatization, and The US Government must be especially attentive to the concerns of developing countries that do not view their small telecom service requirements nor those of their consumers as being of any great commercial interest to INTELSAT's commercial competitors. INTELSAT's treaty commitment to serving all countries, rich and poor alike, providing universal access under a regime of non-discriminatory pricing—for both lucrative and uneconomical routes—has led many of INTELSAT's less developed member countries to rely on INTELSAT as not only a carrier of last resort but as their only link to the world.

On the other hand, we also understand that there are long-standing concerns about market access to foreign markets by US providers of commercial satellite services. We share these concerns. With respect to satellite market access issues linked to the investment of government-owned telecom entities in INTELSAT, it is clear that, as a result of market incentives and the persistent market opening efforts of the US Government over many years, there is an irreversible trend toward market liberalization and privatization around the world. In fact, approximately 75% of INTELSAT is owned today by telecommunication entities that are privatized to some degree or committed to privatization. To the extent that satellite market access issues have been linked to the role of INTELSAT itself, I would point out that as of February 1997, of the 52 countries that made WTO market access commitments for fixed satellite services, 50 of them are INTELSAT member countries—demonstrating that there is nothing inherent about INTELSAT's investment structure that impedes a country from opening its market to competition. And, while the privatization process should result unqualifiedly in an INTELSAT that does not have the ability to compete unfairly with other commercial satellite operators, the INTELSAT privatization process is not the appropriate mechanism for addressing broader satellite service market access and trade concerns. These concerns should be addressed through either the WTO or, perhaps more effectively—through a focused US program of bilateral trade negotiations with "problem" governments.

We also support the bill's requirement that the privatization process be reviewed by the Executive Branch on the basis of relevant criteria set forth in statute, and that a determination be made concerning whether the privatization process either is or is not pro-competitive. On the basis of this review, the FCC would then be able to accept and process applications for or by the privatized INTELSAT in the same way it deals with other satellite-related applications—applying the FCC's current DISCO II standard and its traditional public interest test. We believe that this is the appropriate "division of labor" within the government—one that ensures that all issues raised by the privatization process of an intergovernmental organization are reviewed by the competent agencies, and that licensing related to the privatized INTELSAT can move forward quickly. Mr. Chairman—your bill is, appropriately, "de-regulatory"—consistent with what the US quite literally "preaches" to the rest of the world. Perhaps as a relatively new player we take US rhetoric about the importance of minimal regulation too seriously. But I have to admit that we have been taken aback by other proposals in this area that would involve elaborate rulemaking proceedings that would go on for years, and page after page of detailed licensing requirements. An overly complicated regulatory process—and the protracted delay that would result from the procedural gamesmanship such a process would encourage—do not serve the goals of either privatization or enhanced competition. It would only serve to advantage INTELSAT's competitors. A fully privatized INTELSAT is

an important prerequisite to establishing a level competitive playing field. Congress should not allow itself or this legislation to be used by one set of competitors to misuse the regulatory process for the purpose of delaying or precluding the privatized INTELSAT from being a full participant in the marketplace. Nor should a properly privatized INTELSAT be subject to an ongoing, special regulatory regime unique to it alone—or be made to bear regulatory burdens to which no other industry player is subject.

Mr. Chairman—the ORBIT bill recognizes that enhanced competition is not something that can be micro-managed into existence by legislators or regulators, but must instead arise freely out of the pursuit by commercial adversaries of customers under laws and regulations that apply equally to each. ORBIT will promote just such a competitive environment,—a level playing field—and the Lockheed Martin-COMSAT transaction is exactly the type of market-driven combination that is the logical and beneficial outcome of such an environment. Should Congress enact legislation embodying these principles this year, the winners will be the consumers of international telecommunications services. Enactment of ORBIT legislation will make those consumers—from populated urban centers to remote and rural areas—the beneficiaries of enhanced competition, technological innovation and the availability of advanced communications services at competitive prices. ORBIT also will strengthen the U.S. position in the global marketplace and preserve and grow jobs in an important economic sector. Accordingly, Lockheed Martin urges the Senate to help make this reform of the competitive marketplace a reality by enacting ORBIT as expeditiously as possible.

Thank you for inviting me this morning and for listening to my brief presentation. I look forward to addressing any questions that you may have about Lockheed Martin's support for the ORBIT bill or matters related to our proposed acquisition of COMSAT.

Senator BURNS. Thank you very much.

We will hear from Mr. Conny Kullman, Director and CEO of INTELSAT. Thank you for coming today.

STATEMENT OF CONNY KULLMAN, DIRECTOR GENERAL AND CHIEF EXECUTIVE OFFICER, INTELSAT

Mr. KULLMAN. Good afternoon, Mr. Chairman and members of the subcommittee. It is a pleasure for me to be here again. I had the opportunity to be here in September on the same subject, and it is a pleasure to be here again today.

This afternoon I would like to address three points. I will begin by updating you on the significant progress that INTELSAT has made toward further privatization and commercialization since I appeared before you in September. Next I will identify several factors which influenced how our members proceed with this effort—the INTELSAT members. Finally, I will provide INTELSAT's views on your bill, S. 376.

First, a word on our progress, Mr. Chairman. I am pleased to report that on the 30th of November, last year, we transferred one-quarter of our satellite assets to the new company, New Skies Satellites. It is a private company, based in the Netherlands. New Skies is now in business, competing against INTELSAT and all the other satellite operators in the business.

New Skies may seem modest in size, but its significance to the privatization process is considerable. New Skies was the first real test of whether INTELSAT signatories and parties would be willing to start down the path toward privatization. The answer was yes, by unanimous consent.

I can assure you, therefore, that creating New Skies was just the first step. I was selected the INTELSAT Chief Executive Officer on a platform that emphasized commercialization and privatization for clear business reasons. I take that mandate very seriously. How-

ever, we must bear in mind that, as an organization with 143 member nations, INTELSAT can achieve privatization only by consensus reached through multilateral negotiations.

Indeed, I recently travelled four continents in an effort to forge a consensus on privatization among our members. During my trip, I met with around 50 party and signatory representatives. I do not recommend that you travel that many time zones in that short timeframe as I did, but I made this trip because I believe strongly that privatization is necessary for INTELSAT survival.

In today's global marketplace, INTELSAT faces intense competition from other geostationary satellite systems, and also from the emerging low-earth-orbit satellites, the LEO's, and also from the massive build-out of the transoceanic cables. Mr. Chairman, it is the global market forces that are driving the privatization of INTELSAT, not the will of any one member country, including the United States.

Let me now bring you completely up to date by reporting on the Board of Governors meeting that was held last week here in Washington. Restructuring and privatization not only led, but dominated, the agenda. The Board instructed INTELSAT management to immediately develop business plans for implementing the most aggressive privatization options.

Mr. Chairman, this brings me to my second point. While the U.S. advocates privatization, the U.S. regulatory and legislative environment is making it difficult for us to achieve a consensus. On the regulatory front, I am not here to speak for New Skies, but it is clear that the INTELSAT members view the regulatory treatment of New Skies as a barometer for how a privatized INTELSAT will fare. What they see in the United States is frankly quite disturbing. Let me elaborate.

Your FCC has permitted those U.S. earth stations, formerly serviced by INTELSAT capacity, to connect with New Skies only on a temporary basis, in the FCC's own words, "at their own risk." Further, the FCC has thus far refused to act on applications filed by potential new customers of New Skies. Such impediments, which could jeopardize the New Skies IPO, and further diversity in ownership, send the wrong message to the international community. Will the United States allow a privatized INTELSAT to compete on a level playing field, or will it erect roadblocks similar to the ones faced by New Skies? Our members need to know as they decide the future of the organization.

On the legislation front, it is essential that the FCC's negative message not be echoed by the U.S. Congress. It would be ironic and unfortunate if U.S. legislation intended to foster INTELSAT privatization in fact did just the opposite. I am confident, Mr. Chairman, that this is not the message you intend to send.

Last, I would like to address the proposed legislation. I want to emphasize that INTELSAT agrees with the U.S. administration's positions set forth last September by Ambassador McCann, and also today, that no legislation is necessary to ensure that INTELSAT privatizes pro-competitively. If Congress does choose to legislate, however, we endorse your overall approach of recognizing that the United States should work constructively with its international partners and with INTELSAT.

Nevertheless, we do have concerns about several aspects of S. 376 which differ significantly from the bill you introduced last year, Mr. Chairman. For example, last year's bill specified goals and objectives for the U.S. to advance within the framework of INTELSAT agreements. In contrast, the present bill prescribes precise criteria for privatization, and imposes penalties if these criteria are not met.

Further, last year's bill did not limit INTELSAT's access to the U.S. market. In contrast, the present bill would violate U.S. international obligations by imposing an immediate freeze on INTELSAT services.

Entirely separate from your proposed bill, Mr. Chairman, I would like to identify three elements that our members would find objectionable in any legislation passed by any country. One, no national legislation should require INTELSAT to produce more piecemeal spinoffs. Rather, further privatization must encompass the entire organization. Breaking up INTELSAT might be good for our competitors, but definitely not good for competition and the consumers.

Two, no national legislation should bar INTELSAT's current owners from holding an interest in any privatized entity.

Three, the international community is squarely opposed to any legislation that would require one INTELSAT party to retaliate against another party simply because they do not share the same privatization agenda. I do recognize that your bill would not do so, Mr. Chairman, but I mention these points because the prior House bill had taken such an approach and included these three elements.

In closing, I look forward to working with you as INTELSAT takes further steps toward privatization. Thank you.

[The prepared statement of Mr. Kullman follows:]

PREPARED STATEMENT OF CONNY KULLMAN, DIRECTOR GENERAL AND CHIEF EXECUTIVE OFFICER, INTELSAT

Good afternoon Mr. Chairman, and Members of the Subcommittee. I am Conny Kullman, Director General and CEO of the International Telecommunications Satellite Organization—"INTELSAT." I appeared before this Subcommittee last September to discuss the international telecommunications market and the role of INTELSAT in that competitive market. Today, four months into my tenure as Director General and CEO, I appreciate this additional opportunity to update you on developments in the international telecommunications market and INTELSAT's privatization effort. I would also like to offer some observations on the satellite reform legislation you are considering and highlight some very real concerns our Members have about the U.S. treatment of a future privatized INTELSAT. These concerns have been heightened by the regulatory experience of New Skies Satellites.

Since I appeared before you last September, INTELSAT has taken significant steps toward privatization. Specifically, the transfer to the INTELSAT spin-off, New Skies Satellites N.V., of five operating satellites and one under construction was completed last December. New Skies is a totally separate Netherlands-based company. It is a new competitor in the global satellite market, capable of competing with INTELSAT and everyone else. While New Skies may seem modest in size, its significance to the privatization process is considerable. New Skies was the first real test of whether the Signatories and Parties that comprise INTELSAT would be willing to start down the path towards privatization. The answer was yes, by unanimous consent.

I can assure you, therefore, that creating New Skies was just the first step. I was elected to the office of Director General on a platform that emphasized commercialization and privatization, and I take that mandate seriously. Privatization lead the agenda at the INTELSAT Board of Governors meeting held last week in Washington. Indeed, at that meeting, the Board agreed to examine a number of specific options for operating INTELSAT as a private business enterprise. But, in doing so, we must protect the interests of all our current users, including those lifeline users

in developing nations that rely on INTELSAT as their sole connection to the rest of the world. And we must bear in mind that, as a 143-member nation organization, INTELSAT can achieve privatization only by consensus forged from multilateral negotiation. I am committed to using our multilateral consensus-building process to achieve the privatization of INTELSAT as quickly as possible.

Mr. Chairman, with all due respect, it is global market forces that compel the commercialization and privatization of INTELSAT, not the will of any one Member, including the United States. In short, privatization should go forward because it is necessary for INTELSAT's survival in the increasingly competitive market that we face. But change, however necessary, cannot be achieved by the fiat of a single country, regardless of how well-intentioned that effort might be. As a result, legislation by any one country that seeks to mandate change to the INTELSAT organization will not facilitate change or accelerate the process. To the contrary, it would likely be counterproductive. It could cause the privatization efforts to be delayed or, worse, derailed.

INTELSAT's Position in the Dynamic and Competitive Satellite Market

During my last appearance, I tried to dispel the myth promulgated by our competitors that INTELSAT is a monolithic power that dominates the international satellite market. Far from thwarting competition, we welcome it. We want to fight our battles in the marketplace and not in the regulatory arena or the halls of the U.S. Congress. Mr. Chairman, recent events further underscore INTELSAT's non-dominant position:

INTELSAT is not a cartel: INTELSAT neither restricts the volume nor controls the prices of services that Signatories sell to others, nor do we prevent Signatories from investing in or using competing international facilities. In fact, the recent actions of our New Zealand Signatory, Telecom Corporation of New Zealand Ltd., bear this out. Telecom New Zealand is the leading investor in the $1.2 billion Southern Cross Cable, which will soon connect New Zealand with Australia, Fiji, Hawaii, and the mainland United States. It will be the first direct fiber optic link between the Pacific Rim and the United States. No cartel would permit one of its members to spearhead a venture which would pose such significant competition to the organization.

INTELSAT is not a monopoly: The events of the past few months have further discredited any notion that INTELSAT exerts monopoly power in any market. For example, Hughes/PanAmSat (our leading competitor) told you last September that INTELSAT should be disbanded by legislative fiat because it possessed the largest single fleet of Western-built commercial geostationary communications satellites. In reality, both Hughes/PanAmSat and INTELSAT currently operate fleets consisting of 19 satellites. Later this year, however, when Hughes/PanAmSat launches the Galaxy XI, it will own the world's largest commercial fleet. Indeed, Hughes/PanAmSat is likely to hold its leading position for some time. INTELSAT has no new launches scheduled before mid-2000, by which time Hughes/PanAmSat plans to deploy even more new satellites. Already, Hughes/PanAmSat boasts on its Web site to customers and investors that its global system provides "unparalleled coverage of the Americas, Europe, Africa, the Middle East and Asia."

INTELSAT Exercises No Market Power Even on Thin Routes: In September, I emphasized that the FCC had recently found that INTELSAT enjoys no market power on any major international communications route to or from the United States. At that time, the FCC had not yet examined the so-called "thin routes," where no other satellite carrier is willing to provide service. On these routes, INTELSAT's prime objective of ensuring global interconnectivity obligates it to provide communications services on a non-discriminatory basis. Our leading competitor, Hughes/PanAmSat, had suggested that these thin routes, which account for only 8% of INTELSAT's U.S. revenues, provide INTELSAT with a lucrative monopoly. Just last month, however, the FCC issued an order determining that our U.S. Signatory's uniform pricing commitment—and the U.S. Signatory's commitment to lower its tariffs by four percent annually until at least 2002—together prevent it from exercising market power or distorting prices *even* on the thin routes. Thus, the FCC has in effect concluded that INTELSAT enjoys no market power on *any* route to or from the United States—major *or* minor.

INTELSAT Faces Increasing Competition From Fiber Optic Cables: Since the last hearing, the TAT–14 transoceanic submarine cable connecting the United States and Europe has nearly been completed. At a cost of $1.5 billion, the TAT–14 will soon be able to carry more than 7.7 million simultaneous telephone calls when it enters onto service next year. And it will be owned and used by a consortium of more than 50 telecommunications operators, many of them INTELSAT Signatories.

But TAT–14 was only the beginning of the global buildout in modern fiber optic transoceanic submarine cables that will compete against INTELSAT and other satellite carriers. Several submarine cable projects even larger than TAT–14 have recently been launched. The billion dollar FLAG Atlantic-1 Cable, will link the USA, the UK and France and will be capable of carrying nearly fifteen million simultaneous telephone calls on each of two transatlantic cables. When it is completed next year, the FLAG Atlantic-1 will have the largest capacity of any submarine cable system in the world. But it will not have the longest cable. That honor will belong to the 29,000-kilometer Southern Cross Cable Network currently under construction. With enough capacity to carry 1.5 million simultaneous telephone calls, this $1.2 billion dollar cable will be the first direct fiber optic link between the Pacific Rim and the United States. And, as I have already noted, the lead investor in the Southern Cross Cable is the INTELSAT Signatory for New Zealand.

The reign of the Flag Atlantic-1 and the Southern Cross as the world's biggest and longest submarine cables may be short-lived. Even as we speak, a ship called the Long Line is slowly crossing the Pacific Ocean, en route from California to China, unspooling the $1.2-billion China-U.S. Cable. This cable will be able to carry nearly 5 million calls at once—or all the programming of all the U.S. cable television networks. And the most ambitious undersea cable plan to date is "Project Oxygen," an initiative to connect 78 countries and locations with over 150,000 kilometers of undersea cable, at a projected cost of $15 billion dollars. Earlier this month, the FCC authorized Project Oxygen to land in the United States. By the time Project Oxygen is completed in 2003, it promises to compete vigorously against INTELSAT and other satellite and cable providers.

Historically, INTELSAT's international public switched network operations have been an essential component of its business. The proliferation of cable competition has steadily eroded INTELSAT's share of this carriage. Indeed, INTELSAT has had to substantially reduce its IPSN business projections. The disproportionate build-out of transoceanic cables to and from the U.S. has significantly reduced American usage of INTELSAT space segment. In contrast, other countries with fewer cable options have become heavier users of INTELSAT space segment and are understandably concerned about its future.

In sum, INTELSAT faces a world of competition that it never faced before. This is in addition to the competition that INTELSAT has long faced from other geostationary satellite systems, and from low earth orbit satellites, or "LEOs," that can provide many similar services. The speed of technological innovation ensures that INTELSAT will continue to face competition from a myriad of sources. I have attached some charts that illustrate these trends.

Proposed Legislation

With this background, let me now comment on the Chairman's proposed legislation.

First, we commend your bill for recognizing that the United States must "work constructively with its international partners, and with INTELSAT itself." As a treaty-based organization, each of our member nations has a voice in our operations, present and future.

We also understand that, given the dramatic technological changes that have reshaped global satellite communications during the past several decades, the United States and other countries may wish to update their own national laws and regulations. Of course, this is the sole prerogative of individual INTELSAT parties, and INTELSAT takes no position on domestic aspects of the proposed legislation. Mr. Chairman, the issue of direct access has been raised in your proposed legislation. With all due respect to you and other Members of this panel, I want to make it clear that this is an issue for the United States and not for INTELSAT.

Turning to the international aspects of the legislation, INTELSAT Members are well aware of the United States' strong policy favoring privatization. This position has been vigorously advocated by both the U.S. Party and its Signatory throughout the privatization process. And INTELSAT understands that the Congress may wish to establish through legislation the goals and objectives to be pursued by the U.S. Party and Signatory. In this regard, Mr. Chairman, INTELSAT supported the overall approach of the bill you introduced last year, which would have established such goals and objectives. But it is neither necessary nor helpful for the United States to unilaterally legislate mandates and benchmarks for INTELSAT's privatization.

Indeed, in the highly competitive and dynamic marketplace that I have described for you, there is no pressing need for legislation and certainly no justification for employing punitive and anticompetitive sanctions and restrictions ostensibly to hasten INTELSAT's privatization. Such sanctions, though good for INTELSAT's competitors, would not be good for competition or consumers.

For example, the bill requires that the United States withdraw from INTELSAT if certain timetables are not met. If this ultimate sanction were applied, INTELSAT would be forced to stop serving the U.S. market. With one less provider and significantly less satellite capacity available, both competition and space segment supply would be diminished, and prices likely would increase. Though our competitors would benefit, U.S. consumers and service providers would not.

Further, INTELSAT has serious reservations about the "carrot and stick" approach employed throughout S. 376. In some instances, these provisions would improperly restrict INTELSAT's treaty-based rights to serve U.S. international markets. For example, Section 603(b) would in effect freeze existing services provided via the INTELSAT system pending privatization. This restriction would conflict with U.S. obligations under the INTELSAT Agreement, which prohibit any Party from restricting global connectivity via the INTELSAT system. Indeed, after frank discussions between INTELSAT and the Argentine government, Argentina recently lifted similar constraints on INTELSAT's ability to operate to and from its territory.

The bill also prescribes various criteria that must be met by the privatized INTELSAT in order to avoid sanctions under the bill. We do not believe that the U.S. or any other INTELSAT member can or should attempt to mandate the precise outcome of the privatization process by restricting the ability of INTELSAT or its successors to compete. Successful reform is achieved through vigorous negotiation, respect for the framework already established by international agreement, and broad-based consensus-building among Member nations—not through restrictive mandates and unilateral sanctions. Indeed, the process of privatization would be brought to a crashing halt were multiple Members to lock themselves into rigid positions on outcome. For the past two weeks, I have engaged in discussions with our member governments and Signatories around the world on the future structure of INTELSAT. In all parts of the globe—Africa, Asia or Europe—the Parties and Signatories have all expressed their concerns that the U.S. could enact punitive legislation that would seek to preempt the continuing process of INTELSAT's privatization.

Finally, the bill specifies factors for the FCC to apply in granting access to the U.S. market by New Skies that essentially codify the FCC rule in DISCO II for IGO spin-offs. INTELSAT and other interested parties (including the U.S. government) took great pains to structure New Skies in a manner that is consistent with the requirements of DISCO II. However, we believe it is inappropriate to codify the DISCO II criteria *only* for IGO spin-offs. Indeed, locking criteria into law forecloses necessary flexibility in the regulatory process. For example, this provision would prevent the FCC from ever leveling the playing field for IGO spin-offs with regard to market entry.

We would also like to bring to your attention that the pro-privatization message coming from the U.S. Congress and Administration is being undercut by U.S. regulatory treatment of New Skies. Indeed, our Parties' and Signatories' experience in the New Skies matter has given them cause for concern with regard to further privatization. Let me be more specific.

To date, twenty U.S. companies holding licenses to operate over 90 earth stations have applied to transfer their existing operating authority from INTELSAT satellites to New Skies satellites. Rather than granting the applications, however, your FCC has permitted these earth stations to operate only on a temporary basis. These U.S. earth stations are, in the words of the FCC, operating "at their own risk."

The agency's refusal to grant existing or new earth stations permanent authority to communicate with New Skies' satellites has created uncertainty. Because of the FCC's delay, New Skies cannot offer any new services or obtain any new customers. At the same time, the FCC has recently streamlined its application processes for the international submarine cables that compete against satellite carriers. Under the new procedures, companies seeking to land submarine cables in the United States face essentially no regulatory delay.

These regulatory hurdles have created uncertainties for New Skies and, if not resolved promptly, could jeopardize New Skies' Initial Public Offering and its ability to further diversify its ownership. Yet early diminution of the percentage of Signatory ownership of New Skies was a major U.S. objective.

Such impediments hinder INTELSAT's privatization by sending the wrong message to the international community. Mr. Chairman, as I have found in my recent travels, such actions not only send conflicting messages about the U.S. direction on privatization, but could also influence the ultimate location and regulation of a privatized INTELSAT.

Conclusion

In closing, INTELSAT urges this Committee to ensure that U.S. laws and policies adhere to the following basic principles: (1) The United States should respect its international commitments embodied in the INTELSAT Agreements; (2) The United States should continue to encourage privatization of INTELSAT through good faith negotiation and respect for the interests of all Members and not by the unilateral actions of one Member; and (3) the U.S. regulatory authority should treat privatized entities in a fair and equitable manner that allows them to compete on a level-playing field. We look forward to working with you to achieve these ends.

Senator BURNS. Thank you, Mr. Kullman. Senator Breaux, if you want to offer an opening statement.

Senator BREAUX. I will just make some comments when I ask questions.

Senator BURNS. Mr. Cuminale, we have heard quite a lot about size and fishing today. How does the size of your satellite fleet compare to those of your competitors, and will the size of your fleet increase by the year 2000?

Mr. CUMINALE. Sure. As a matter of fact, I am glad you asked that question, because our fish is not so big. What we have for you, Mr. Chairman, and I will leave it with you today——

Senator BURNS. It is not big enough for bragging rights?

Mr. CUMINALE. Well, we brag plenty, but I think it has been suggested that what PanAmSat is looking to do is actually diminish INTELSAT so that we would end up bigger than any other international satellite company in the world, and we have two responses to that.

One is, I have got two charts here that I will give you that demonstrate that both at the end of 1998 and at the end of 1999, when you take all of our satellites and compare them to INTELSAT, and you compare all of our satellite capacity to all of the capacity that INTELSAT has in 36 MHz equivalent transponders, which is the way things get measured, we are substantially less than and will be substantially less than half the size of INTELSAT when you compare the satellites that we use to compete with them in the international market.

The second chart I have for you, because we basically serve two markets, U.S. domestic, which is a noninternational market, which essentially involves services entirely within the United States, and then international, on the U.S. domestic side, we have basically compared for you the capacity that PanAmSat has versus all of our other competitors, and essentially—actually, not all our competitors. Telstar and GE, who are the two major competitors in the U.S. domestic market.

Now, the fact is that you can say we are going to have 24 satellites, INTELSAT is going to have 24 satellites, but that is not going to give you a sense of competition between the two of us, because the satellites that we have devoted entirely to domestic service do not compete with the INTELSAT satellites, entirely different service, entirely different market, so I will leave that with you.

But the answer is, are we a robust company with a great business? Absolutely. Does Fred Lanman brag about it, yes, and he should, but the reality is that the fleet that we have and the fleet that we are going to have to compete with the INTELSAT business does not come up to the size of INTELSAT and will not and would not even if INTELSAT were cut into two pieces, and so I will leave

that for you today, Mr. Chairman. We will make sure copies get circulated to the members.

Senator BURNS. I guess we could also talk fleet size, but how about capacity size?

Mr. CUMINALE. When you look at capacity on 36 MHz transponders at the end of 1999 we will have, in terms of transponders in orbit internationally, 469 transponders in 36 MHz equivalents compared to 1,328 for INTELSAT, and that excludes the new skies capacity of 296 transponders, so that clearly they are looking at not quite a 3 to 1 advantage on the U.S. side at the end of 2000 we are showing Telstar with 240, GE with 410, and PanAmSat with 427, which makes PanAmSat the leader, having a 39.6 share of the capacity in orbit, followed right by GE with 38.1 percent and Telstar with 22.3 percent, so that is how the markets break up for the two of us. As I say, we have these charts here for you.

Senator BURNS. Well, we thank you for that. Do you agree that direct access not only provides carriers with access to INTELSAT without having to go through COMSAT but also provides INTELSAT with direct access to the largest and most lucrative market in the world, and that is the U.S. market? Why would INTELSAT agree to privatize if it already is given one of its principal business objectives?

Mr. CUMINALE. Another very good question, Mr. Chairman.

We agree that if it is unencumbered access, direct access by INTELSAT or by customers to INTELSAT does equate to direct access by INTELSAT to the U.S. market, which is the very thing we are saying you should use in your bill.

The position we have developed, however, on direct access, is simply this, that for the core services for which INTELSAT was formed, INTELSAT should be allowed to deal directly with the carriers. We have been persuaded that that will save the consumers money and we have been persuaded that a couple of other things may follow from it.

First, one of the conditions that we would place on that direct access is that INTELSAT would waive its privileges and immunities with respect to new contracts for those services, so things beyond what is currently being provided today would require some waiver, which as you know is a real hot button for us and for all the competitors. We would like to see those go away and, frankly, we would like to induce them to be waived.

Second, and probably more importantly, is the fact that if the market access is limited in terms of the scope of services for which direct access can be provided, you still have the big hunk of the carrot to give away, and we think that that is the part of the carrot that ought to be used to induce INTELSAT to want to move forward into complete direct access into the U.S. market, so what we see this limited direct access as providing is a taste of the carrot for INTELSAT, a possibility for seeing some waivers of privileges and immunities, and an immediate reduction of costs for the consumer in the U.S.

Senator BURNS. Senator Rockefeller.

Senator ROCKEFELLER. Thank you, Mr. Chairman. This question would be to both John Sponyoe and also Betty Alewine. You argue

that lifting the ownership cap on COMSAT will lead to more competition in satellite services.

Now, occasionally I am capable of being parochial. When it comes to satellite services and particularly broadband satellite services, how does what you see in this benefit a State, a rural State like West Virginia?

Mr. SPONYOE. As we had, I think this discussion in your office sometime ago, we really feel that broadband is the wave of the future. In fact, it is one of the things that is being discussed as being withheld on the carrot and stick approach with INTELSAT.

We believe that satellites do an excellent job of providing the coverage you talked about earlier, and we look not only in West Virginia but around the world in areas that are underserved or unserved today. We believe without that infrastructure that will not be there for years, if ever. We can provide that service.

I think that as we put up—we are bidding on a thing called Astrolink in the not too distant future. That will provide a beam that goes all the way from Washington, D.C. and covers the entire West Virginia State. We believe that would give you the capability for small businesses and homeowners to provide that coverage for high speed Internet connection E-commerce, et cetera, within your State and other rural States within the United States.

We cannot close, as you know, without this bill being amended, and close in terms of purchase of COMSAT. We really believe, if we take a look at where we are today and the need to have their experience over the last 30-some years in this business, that will give a very, very powerful, capable competitor, and one which will get those capabilities out to your State and many others.

Thank you.

Ms. ALEWINE. I would agree with all of that. I would just like to add a couple of things. As I had mentioned in my oral remarks at the beginning, when we are accused of having a monopoly on the thin routes, that is—part of our mission, Senator, is on a nondiscriminatory basis, to offer nondiscriminatory pricing to the big and the little as well as the developed and the developing.

We are used to providing universal service. One of the things that the merger with Lockheed Martin and COMSAT does, we are a very, very, very small company. We have $600 million a year in revenue, and of that $600 million only $250 million of it comes from the INTELSAT business.

In order for us to grow and serve our customers better, who serve right now the State of West Virginia, we need critical mass to thrive, to grow, to develop new service offerings, and to serve our customers, so the merger in that regard is in the public interest.

You know, I listened to Mr. Cuminale read that very impressive list of big companies that are against this merger and I ask myself, with our size, it is usually the small guy that is coming and complaining about the large guy. In this one, it is just the reverse. It is the large guys complaining about the small guys. It is a little bit like Goliath trying to kill David, and you know, right now we are precluded from providing service ourselves domestically in the U.S.

If the Satellite Act is changed, if the 10-percent cap is lifted, if Lockheed Martin and COMSAT are able to merge, it will be a very

vibrant and very strong competitor. The size of the list that was read to you—that will add a competitor to the playing field, will add another choice for the consumer, and that has got to benefit your rural users, too, because then we can do things together in terms of pricing that COMSAT cannot do alone.

Thank you.

Senator ROCKEFELLER. Mr. Chairman, later on this afternoon, as I told Senator Breaux, I am going to be visited by the chairman of Mobil Oil Corporation, which is fairly large, and used to belong to something called Standard Oil, and what they are proposing is to merge with Exxon, which as I recall, if I think about it carefully, used to be a part of Standard Oil, also.

Senator BURNS. Are you thinking about writing a book? [Laughter.]

Senator ROCKEFELLER. No. I was just thinking about thanking him for putting the old business back together again. [Laughter.]

Senator ROCKEFELLER. But it is very interesting, what mergers are doing, and we will now go to basically three oil companies, and that is an entirely nother subject.

But Mr. Cuminale, I will not ask it of you, but you have talked about an interest in serving the so-called thin route countries, and you may or may not face some barriers in doing that. I would like you to discuss that, but I would also like you to discuss whether or not, in offering that service, you will do that at a price that these countries are able to afford, and that global interconnectivity has to be a bottom line to all of this.

To be able to do it is one thing. To be able to do it at a price that they can afford is another. How do you answer?

Mr. CUMINALE. First, in terms of our willingness to provide service in the thin route countries, I think we have said on the record more than once, and I think it goes back all the way to Fred Lanman, that we will provide service in any country in any part of the world where we physically can, and I think we have demonstrated a commitment to doing that in terms of trying to obtain licensing in virtually any country that will let us do it to provide services.

I will tell you that we went to an extreme effort to be allowed to provide domestic service in the country of Pakistan when they opened up their market for domestic services, even though they indicated that if they ever launched their own satellite they would want to be able to kick us out.

In terms of pricing, the thing that I think is most important to understand about satellites and is critical about competition is that there is no additional cost for us to provide a circuit to Zimbabwe over the cost of providing a circuit into New York City. It is exactly the same cost because of the nature of the satellite and the nature of its geographic coverage.

We have built satellites that have whole beams over parts of the world that we still cannot get access to for vast numbers of services, but we have done it on the hope of being able to provide those services and to recover our cost with, obviously a profit.

Examples of that are most recently Australia. We had an Australian beam on our PASS–4 satellite that we knew we could not use when we launched it back in 1995. We were not allowed to use

it until 1998, and we still think it was a smart move for us to build it. In terms of whether we can provide those services at competitive rates, all I can tell you is that when we are allowed market access, and when we offer our product and services, those products and services get taken up, and they get taken up because they are competitive and they do provide a quality service.

We believe in the power of competition, always have, and we believe that if we are afforded the opportunity to provide service we can do it and will do it at effective rates.

Senator ROCKEFELLER. So you are saying that the satellite service provides no price differentiation in terms of the area that it covers, but then you indicate that if you were allowed to provide access, and that was the first part of my question.

Mr. CUMINALE. That is the nub of the issue, Senator, of this bill, which is that there are large parts of the world where INTELSAT really is the only company that can provide services.

I had one of our sales organizations just last week come to me and tell me they wanted to do a VSAT system in 15 countries. It happened to be covering a market that we are pretty good at. It is Latin America. The amount of time, and it was a 5 MHz circuit, which in the world of satellites represents—well, of a 36 MHz transponder, you can do the math, it represents less than a quarter, less than a sixth.

We loaded up all of our regulatory people and went out and got the licensing necessary to do the first six countries and we are committed to doing I think another 11 countries, but that is the kind of effort we have to do to be able to provide that service.

I will tell you that INTELSAT could provide that service tomorrow without a blink, and they make a real point of that in the marketplace, so that for us to provide a relatively simple circuit to a customer that had a need in 17 countries, we are going to have to jump through all sorts of regulatory hoops to get there, and that is really the issue here.

Senator ROCKEFELLER. Maybe I am showing my ignorance here, but you are saying that, I mean, a satellite, when you beam something up, and then it comes down over a broad area, that is a completed transaction insofar as the beaming down begins.

You are either suggesting one of two things. One is that your satellite beamed down is blocked, is denied access to whatever Latin American countries, or you are suggesting that the FCC says that you have the satellite up there and that then the beam is able to be beamed down but they are not letting you do it, and I do not understand the technological answer to either of those questions.

Mr. CUMINALE. A very good question, Senator. Let me explain. PanAmSat's business, if you look at it, is almost 80 percent video, which if you think about it, we beam up a video signal and it rains down in the footprint of the satellite. For the most part, all around the world receive only television, TVRO, TV receive only is allowed. That service can be provided in virtually any country in the world, and it is one of the reasons why it is 80 percent of our business.

The communications services that are so integral to developing our business and to really competing are services that require not only the uplink and the downlink and the in-country, but also the

ability to uplink the signal from that country to our satellite and downlink it back to the U.S. or wherever.

The uplinking activity is the activity——

Senator ROCKEFELLER. That is where you get stopped.

Mr. CUMINALE. Yes, and that is the problem, so when you hear us say that we cannot do VSAT services, and VSAT stands for very small aperture terminal, but what it is, it is a network service. If you look at your mobile station, since you are going to be seeing mobile later on top of the station, you see that satellite dish. What is happening with that dish is, they are receiving information from corporate headquarters, and they are transmitting information back on sales.

That uplinking and downlinking, that kind of network has a higher regulatory hurdle, and it is that kind of business from which we have been precluded in vast areas of the world.

Senator ROCKEFELLER. Mr. Kullman, how would you respond to that, sir?

Mr. KULLMAN. There is a couple of statements Mr. Cuminale has done that I would like to address, starting at the end with the market access. We have a principle that is called matching, so if a certain use or a certain customer wants to set up in 15 markets we have to go out and work with those 15 countries to get their matching to that service.

If they do not agree to that service, they will not match, and we cannot provide the service, so in many cases we face similar obstacles to set up a service of this nature, and taking South America as an example we fought for 1½ years to get international access to Argentina in Ku band services. They stopped us from doing those services in that country, and so these types of difficulties are really not only our competition's, they are also our problems in a number of situations.

The second issue I wanted to address, and here I will probably shock you, but I will agree with Mr. Cuminale that in terms of rural services we provide a lot of services today to developing countries, to remote areas of countries, domestic services for those countries, and we do not differentiate that cost.

That is one of the principles we have, equal pricing for equal services, and we do not subsidize these services, we run them the same profits coming out of serving a remote area as an urban areas, and that is the beauty of the satellite systems. You get these coverages really for free.

The cable operators, the terrestrial operators, they would have to pull cables to each of these points, and there fore they would incur extra cost, but for us it is really a good market to be in. It is a type of telecommunications business where satellites function really, really well.

The last issue I wanted to address is the size of PanAmSat versus the size of us. Mr. Cuminale omitted to tell you that he has also a very attractive satellite fleet serving the U.S. market, a market that we today cannot address for domestic services, and he said he has 469 transponders, or 36 MHz units versus our 1,328, if I remember the numbers right. That also gives me another reflection.

Today, PanAmSat, more than 50 percent of their satellites are for the international market, and so just scaling these numbers would mean that he would be on the order of 9, perhaps 1,000 units in total for his services. He will surpass us in revenue for this year. We have 1,328. He has roughly 1,036 MHz units. Our revenues are about the same, so that would give you an indication of who has the lower prices and who sells at the best prices to the consumers.

So I think that numbers have to be correct, and it is extremely inappropriate to exclude the U.S. domestic market segment from the numbers that PanAmSat is quoting. If you started to do that, we should also strip out everything we do that has to do with domestic services. Many of the smaller countries around the world, and also quite some substantial countries, use the INTELSAT capacity also to serve the domestic markets.

So I think the most fair comparison is to look at the overall number of satellites, look at the overall capacity, and the overall revenues for these companies, and when you do that you will find that they have the same number of satellites as we have today. Their revenues, according to their own announcement, will surpass us this year.

If we look to the year 2001, and using the Wall Street data from DLJ, PanAmSat will have revenue of around $1.8 billion, and 24 satellites. INTELSAT, with the projections we have in place right now, will be around $1.04 billion with 22 satellites, and so these companies are really starting to be in the same size today, and you can also draw your own conclusion from those numbers when it comes to the pricing of the services.

I also want to take the opportunity to correct something I said. I forgot a little important word in my presentation, the word not. My staff in the back reminded me that I might have jumped that one, and so I wanted to again restate what I intended to say about breaking up INTELSAT, and that is that breaking up INTELSAT may be good for our competitors, but definitely not good for competition.

Mr. CUMINALE. I liked it better before. [Laughter.]

Ms. ALEWINE. Mr. Chairman, may I just add something, please?

Senator ROCKEFELLER. Actually, I had a question that I was going to give Mr. Cuminale a chance.

Mr. CUMINALE. If I may, I will be very, very brief. I think in terms of revenues—Conny, I am sorry to hear you had such a bad year, but as I recall, last year, 1997, INTELSAT did $900 million in revenue, and I know this year—I have not seen your numbers for this year, but I know our numbers are more like 780 for 1998, which means you had a real bad year in 1998, because you do surpass us.

The other thing I would like to point out to you is, remember that PanAmSat sells to the end user. INTELSAT sells to the signatory who sells to the end user and there is indeed a markup there of some sort, and we can argue about how much of it goes to the cost of the service provider and how much does not, but if you want to consider INTELSAT's revenue, I am using 1997's revenue, because that is the only number I have, but it was around $1 billion.

If you figure that the customer that receives the service of INTELSAT, the end customer pays roughly the same markup for all the capacity that COMSAT charges overall, and I am not saying it is all profit, I am just trying to get you to a gross number, that gets you to about $1.6 billion in terms of total revenue from end consumers for satellite capacity. Ours is 750, so keep that in mind.

The other thing I just want to point out is, I did mention our domestic fleet, but when you talk about competition you have to talk about assets that you put in competition with one another. The fact is that I also mentioned to you we provide domestic services in Pakistan. Our international capacity is used for both international services and domestic services abroad. We use it for anything we can, and we think all of our international capacity is at competition with INTELSAT, but to suggest that our domestic capacity competes with them, well, it clearly does talk about our financial strength, and I will not argue that issue.

I agree with Mr. Kullman, we are a very strong company, and we have about $3/4 billion in revenues, but I will argue that we do not compete with him using those assets, and there are other companies abroad that are like that also. Astra, for example, is purely domestic in Europe. We do not consider them a competitor of ours. We do not do that business, and we are not competitors with them, and I think it is very important that when you do look at numbers you parse them in a way that makes some sense, and I argue our way does.

Senator BURNS. Did you want to comment? I am going to move to Senator Breaux.

Ms. ALEWINE. I sure would like to, and I will be as brief as I can, but this is in response to a couple of Senator Rockefeller's questions. The first one was about—and I think Mr. Cuminale has left the committee with perhaps a wrong impression that in the countries where they cannot offer service right now, that it is INTELSAT that would either be able to approve that or is standing in their way.

I would agree with Mr. Cuminale on one thing. We wholeheartedly support open and free competition, but in those countries that is a Government issue, and we would encourage our Government, our party to work on a bilateral basis to help open those markets for any and all comers. That is not an INTELSAT responsibility. It is not INTELSAT that is standing in the way in those markets.

I thank you, Mr. Chairman. I just wanted to clear that up.

The only other thing I wanted to say, when Mr. Cuminale was talking transponders, you can throw numbers around fairly freely, but what I would rather do is simply quote PanAmSat's new CEO, Mr. Kahn, who was not able to be here. I was looking forward to meeting him, but he was in New York on Monday of this week, and he did address the Morgan Stanley Telecommunications Conference, and these are direct quotes from the new CEO of PanAmSat.

"We are the market leader in both video and telecommunications. 70 percent of U.S. VSAT's communicate over PanAmSat. We reach 98 percent of the world's population with 19 satellites."

Now, this goes to the transponder issue. "By mid-2000 we expect to have 16 percent of the market based on transponders, with INTELSAT at 13 percent."

When Mr. Kahn was asked why he joined PanAmSat and came into this position, he said because "Hughes PanAmSat is the industry leader, with phenomenal space segment access."

Thank you.

Mr. KULLMAN. Mr. Chairman, I also want to——

Senator BURNS. Let's hold the phone here. I do not know, you can take a nap if you like. [Laughter.]

Mr. SPONYOE. Just very briefly, I do not want to be left out on this. I do not know who originally coined the term voodoo economics, but I have heard it for the first time here, first-hand. PanAmSat is a private corporation making a determination where they want to make their investment. The fact that they are choosing to invest in satellites over the U.S. is their choice. I agree 100 percent with INTELSAT in terms of their valuation.

Second, as we speak today, I have people in the Philippines, I have people in Thailand, I have people in India, all struggling to get licenses that have nothing to do whatsoever with INTELSAT. I would suggest to you that is what the market is out there, and we all have to live with it.

Thank you.

Mr. KULLMAN. Fifteen seconds, please, just to comment on the numbers. 1997 is not a good comparison. We should compare numbers in 1999, after we have spun off the satellites to New Skies, and this year our run rate in terms of revenue will be equal.

Thank you, Mr. Chairman.

Senator BURNS. Senator Breaux.

Senator BREAUX. Well, than how, Mr. Chairman. Let me congratulate you for your efforts in trying to look at telecommunications beyond just the old arguments that this committee has always dealt in about long distance versus local service, and the things that have been in the past.

I mean, this is really looking at the future of telecommunications and what we need to be talking about, and the issues like the use of the international spectrum and allocation interference issues, and proper privatizing of INTELSAT is also part of that.

I mean, this is where the next generation and of congressional efforts I think is going to be headed, and I congratulate you for it and the effort that you have put into putting together a bill that regulates this.

After listening to all of this, you almost make Medicare sound simple. [Laughter.]

Senator BREAUX. That is saying an awful lot, I want you to know, because this is certainly something that after it eventually gets out of this committee, I mean, it is just a huge amount of education that is going to be necessary for most Members of Congress who have almost—who are limited to no idea of all of the conflicts, and the things we are trying to do here.

We are basically trying to establish a framework that makes sense for private competition in this business, and it has been very, very difficult, but I think the chairman is moving in the right direc-

tion, and I hope to be able to join him in the package when it comes out of this committee.

Let me ask Jim Cuminale, one of the concerns that I have is that the bill does not seem to recognize the fact that when you had a private company that is competing against other private companies in this business and is going to be sort of sitting at the table making some of the decisions about how privatization is to occur, that it seems like the bill in this area is fairly vague about protections for everybody.

When COMSAT, or Lockheed acquires COMSAT, and then we are going to be talking about privatization of INTELSAT, I mean, is that handled properly as far as the bill is concerned, and then I will get Mr. Sponyoe to comment too.

Mr. CUMINALE. Thank you, Senator. I think we have gone on the record as saying that it is not—insofar as the ability of that company, privatized, to enter the U.S. market is not as restricted as it could be, and the criteria for determining whether it has met the standard, as it were, is also not as sharp as it could be.

I heard earlier criticism about the way New Skies has been treated in the U.S. market and, frankly, we filed with respect to New Skies entry, but we proposed that New Skies be allowed to enter until it can prove that it has met the criteria, because it is a brand new company. It did inherit this business, and we did not want to see service get shut off, but the fact of the matter is, even the limited criteria that the FCC adopted in DISCO–2 are not met by New Skies at this time, and they have been afforded opportunity to do business in the U.S.

Senator BREAUX. My point is, on the chairman's bill. Is it adequate, the way it is set up, or can it be improved?

Mr. CUMINALE. We think it can be improved.

Senator BREAUX. How?

Mr. CUMINALE. We have submitted a markup, Senator, we would be happy to share with you, but fundamentally what we think is that the criteria for determining whether the private company is pro-competitive is somewhat soft, and that they are suggestive as opposed to required.

Senator BREAUX. Mr. Sponyoe, do you agree with that?

Mr. SPONYOE. No. As a matter of fact, I think it is a very balanced bill, and I submit my rationale with the fact that Conny calls me about every 3 days complaining about the bill. I do not think we ought to give INTELSAT a free ride in the United States. They have immunities today, as I mentioned earlier, to antitrust, to taxation, and so I think there ought to be a carrot and stick. I think you have a corporation called COMSAT today paying taxes.

As we have talked about before, I do not think we have been able to develop a good balance, as opposed to Mr. Cuminale's suggestion that we put some kind of a noose around INTELSAT's neck, and so I support it very strongly.

Senator BREAUX. What about the objection that it is fairly vague?

Mr. SPONYOE. Well, if it is fairly vague, I would like to understand where it is fairly vague. I think there has been a lot of time spent on it. We spent a lot of time on it. We believe it is very specific in the areas of importance where it spells out the requirements in terms of the metrics that are going to be utilized in order

to make a determination of whether or not they truly have met those objectives of privatization.

Senator BREAUX. Well, I clearly do not understand, and Mr. Cuminale, what is your response to that?

Mr. CUMINALE. Well, obviously we have a disagreement about how specific the criteria should be.

I think the other thing we feel very strongly about is that the FCC ought to have a real voice in the execution of the bill and particularly in the granting of market access, which is clearly not the case under the current bill, and I want to point out that while we make that recommendation the FCC has not always ruled in our favor on these issues. We do, however, believe that the process they go through, and the rules that they apply, assure fairness, and we think that they should have a very prominent role in the bill.

Senator BREAUX. It is always very, very difficult. We have got multimillion-dollar industries. We try and establish a level playing field. I mean, I am a big believer in the marketplace, but in this area we have to have some guidelines and parameters. The bill attempts to do that, and my main goal is just doing it right.

We should not be in the business of picking winners and losers. That is something the marketplace should do. But our job is to try and establish a level playing field, and I want to work with the chairman to help do that, and hope everybody succeeds.

Thank you.

Senator BURNS. Thank you very much, Senator Breaux.

Senator Gorton.

STATEMENT OF HON. SLADE GORTON, U.S. SENATOR FROM WASHINGTON

Senator GORTON. Mr. Chairman, I think Senator Breaux has hit the nail right on the head. We are here in an attempt to come up with an appropriate public policy with a goal toward seeing to it that there is vigorous competition in this field, and that the users interests be met to the maximum possible extent. It leads me to suggest that Mr. Chairman, that either we ought to have another hearing, or some less formal way in listening to users, the customers, and seeing what they think is likely to promote competition and a valid pricing system to the maximum possible extent.

It seems that we have three different points of view presented here today, two of which at least enthusiastically say that their position best advances competition, and the other, the present INTELSAT gives lip service to it, but I am not certain whether it really believes in it or not.

Senator Breaux said something else that was very important, and that I am afraid may have been a shortcoming in some of the things this committee has done.

We here on this committee should try to work this out in a way that has broad agreement among members of this committee, because these issues are so technical, and if we do something on a divided basis here, we almost guarantee that we are not going to be successful overall on the floor, and so it is important for us to try to work this out.

We have to ask ourselves this question, Mr. Chairman. Who benefits if we do nothing, who benefits if we do not get this job done

at all, and then we should look, I think, somewhat askance at the views of whatever interest that is.

I would be a lot more comfortable, I tell you, if the two real competitors here have been more or less at each other's—PanAmSat and COMSAT were able to reach a greater degree of accommodation than they have so far, because I rather suspect that the two of them are not going to be benefited by doing nothing in any particular fashion.

But if they cannot, we should, and we should do it in a way that binds together most of the members of this committee with a degree of confidence that will allow us to pass a bill and move on to the next generation in a field in which our predecessors 35 years ago did a magnificent job, given what they had in front of them at that time, but the technology is so different now that we need to do the job over again.

I am told that PanAmSat says that it has worked with a number of other people, including one of my constituents, with some, either a different bill or alternatives to this bill. We have not seen it. If they want it considered, we had better see it pretty soon, it seems to me, but even more important than that, I will say very bluntly, is that the two of you sitting in the middle of the table and your allies, see whether or not you cannot settle some of your differences and give the Congress a real opportunity to move forward.

Senator BURNS. Senator Gorton, I think you bring a good point up on users, and to hear something from users, and we are prepared to have another hearing with regard to that. I think you make a good suggestion, and we had talked about this, and I think that is a good suggestion to hear from the users, and we will do that rather quickly before we go to a markup.

I want to ask one more question. Did you want to respond?

Mr. SPONYOE. Mr. Chairman, if I might, to the Senator's question regarding who is harmed if we do not pass the bill. We and Lockheed Martin, of course, cannot close the transaction without the bill being adopted, and I think that would be a terrible tragedy not to be able to do this today, because I think COMSAT, as I said in my earlier remarks, is not going to be able to compete on a level playing field in the environment that exists to day in the global telecommunications marketplace.

Senator GORTON. Well, that gives you a heck of an incentive to see whether or not you cannot reach a consensus.

Mr. SPONYOE. It certainly does, sir.

Senator BURNS. I want to ask one other question, because where we still—the ongoing dialog, Ms. Alewine, is in the area of Fresh Look, and I would just like for the record your opinion on Fresh Look, and would have other comments from other members of the panel with regard to that particular issue.

Ms. ALEWINE. Thank you, Mr. Chairman, and I would welcome the opportunity to give the committee my comment on Fresh Look.

There is no requirement for Fresh Look. The FCC and the U.S. courts have looked at that very issue and have each individually ruled on that. Those contracts were won competitively. They have been updated, amended. The people who signed them have considered PanAmSat, and when they signed on with us and the amend-

ments to the contract and there is absolutely no reason for fresh look.

The state of play of competition in this country is so significant, which means that the playing field is so very competitive now, that if we do not offer competitive prices and services, our customers have so many options.

If I might take just 10 seconds of the committee's time, 30 seconds maybe, I do not think I can do it in 10, one of the things in preparing for today's hearing was, we hear so many times, and that is why I addressed it in my oral remarks, that we are a monopoly.

If I could, because a picture communicates—you know, it is worth 1,000 words, and I know I do not have 1,000 words left in terms of time, but if I could be allowed to show the committee what I mean by the state of play now in international competition, Mr. Chairman, with your permission, and I apologize to the people sitting behind me. We only have one copy of this. This was the state of play in 1984.

What you see below the map of the United States are 12 INTELSAT satellites, and 15 years ago, ladies and gentlemen, that is the picture of a monopoly. Almost all of the communications that were going in and out of the United States internationally were going over one of those 12 INTELSAT satellites or copper cables.

Let us fast forward to year end, 1998. That is the picture of a full field of competition. What you have in blue are the INTELSAT satellites, 12 of them. What you have in pink are the Hughes PanAmSat satellites. What you have in yellow are the other 41 satellites providing international communications in and out of the United States. Below the line in red are the ones that are planned to be launched and operational by the year 2000, and that is only half of the story.

At the top on the map are all of the fiber optic cables that now offer service, voice, video, and data in and out of the United States.

That is a fully competitive playing field. What has been the impact on COMSAT? Why do we need critical mass, and why do we need to partner with another company where we can thrive and survive and offer services to the future, and to our customers today?

In 1984, no doubt about it, that is the picture of a monopoly. We had 99 percent of the video business. We had 70 percent of the voice business, the market share for international coming in and out of this country.

In 1998, 15 years later, we have 35 percent of the video business, and that is including New Skies, the New Skies number would have to separated out of that, and we have 20 percent of the voice and data business.

Who would be hurt if INTELSAT is not privatized, if this merger is not allowed to go forward? The U.S. consumer and the state of play for competition, because it would take another competitor off the field.

Thank you.

Mr. SPONYOE. I will start off by saying I never met a customer who does not want a better price, so I guess with that premise it comes down to a question of fairness.

Is Betty right in suggesting that these contracts were awarded in a competitive environment and we should be required to prove that?

The one thing I find slightly hypocritical on the part of the customers, though, is during the dialog on Fresh Look it was suggested that the bill also include making certain that those savings go back to the end customer. The suggestion was that that is better left to the regulators as opposed to the legislators.

Thank you.

Mr. KULLMAN. Mr. Chairman, I would like for you to let me ask a question of Senator Gorton regarding the issue of INTELSAT paying lip service to these issues. If he could help me clarify that, what he means by that, it would help me.

Senator GORTON. It simply seems to me that your interest in changing the present system is not overwhelming.

Mr. KULLMAN. The only thing I can say to that is that I was elected to this job on a platform of privatizing INTELSAT, and my management team and I are totally 110 percent dedicated to making sure that happens. There is no future for INTELSAT unless it privatizes. It is going to go down the tubes.

So we see a growth rate today of 4 percent per year. Our aggregate compounded aggregate growth rate of the competitors is on the order of 17 to 19 percent. We have to work differently, and the only way for us to do that is to work in a different structure, a privatized structure, so I can only assure you that it is our 100 percent intent to make sure that privatization happens.

Now, we have 143 member nations, and we need to convince them to move forward, and you know how difficult it is in this room and down in the Senate to get agreement. We have to get those types of agreements from 143 different nations, and we have to move that process forward in a multilateral, multinational discussion and negotiation environment, and that takes a lot of effort on our part, and also on the part of everyone who is a member of this organization.

Thank you, Mr. Chairman.

Ms. ALEWINE. Mr. Chairman, if I might add one quick thing, when you asked the question of the Government representative, Ambassador McCann today, and she responded about Fresh Look, that they did not support it, I would like to tell the committee that one of the reasons that I believe they do not support it is because a year ago at this time, when the FCC granted us non-dominant status based on the fact that we had no market power in any of our markets, what they said in that order, and I would like to read these two sentences, is that "COMSAT's long-term contracts do not impede COMSAT's customers from switching service providers."

"COMSAT's switched voice customers are sophisticated customers, possessing significant bargaining power giving them the flexibility to route a significant portion of their switched voice traffic to their own transmission facilities or those of alternative carriers at any time, as they choose."

This also has been looked at by the Federal courts and in their written decision they said, "nothing in the record suggests that COMSAT secured any of the contracts by means of any anti-

competitive act against"—and in this particular instance we had been sued by PanAmSat—"against PanAmSat."

"On the contrary, the record suggests that for their own reasons the common carriers elected to secure long-term deals with COMSAT only after considering and rejecting offers from PanAmSat." Those contracts should not be overturned. That is a taking of a private, publicly traded U.S. company's property.

Thank you.

Senator BURNS. Thank you. A little bit on Senator Gorton's question. With 143 countries that makes up your INTELSAT, can you privatize by January 1, 2002?

Mr. KULLMAN. We are on a schedule where we will approach the Governments in October of this year and we will work very hard to get the decision in principle in that meeting that we are heading down the right path. It is our internal work schedule then to convince the Governments and the signatories for the final solution within a year's period after that date, which would take us to the year 2000.

Senator BURNS. What will happen to INTELSAT should the U.S. pass legislation calling for COMSAT withdrawal should INTELSAT not privatize by date certain and COMSAT does, in fact, withdraw?

Mr. KULLMAN. That is a hypothetical question.

Senator BURNS. I know it is hypothetical. That is what we were dealing in a while ago.

Mr. KULLMAN. It would be very unfortunate, obviously. If that happened I would think INTELSAT would still continue to exist and serve the rest of the world.

Senator BURNS. Mr. Cuminale.

Mr. CUMINALE. Mr. Chairman, could I take us back to direct access and Fresh Look, because while it is not our issue, and I would encourage you when you have your hearing or discussions with users to raise it with them, because they are passionate about it, so much so that they have convinced us that direct access along the lines I testified as to earlier makes good sense for the U.S. consumer and we should not argue against it, which historically PanAmSat did.

Their argument essentially is that when they made the contracts they made with COMSAT they did not have competitive choices, and that those contracts therefore are contracts that were obtained at a time of monopoly, and I suppose there will be some debate as to where on that spectrum we saw on those charts they were when those contracts were entered into.

Their feeling is, with direct access they should have Fresh Look, because without Fresh Look direct access makes no sense, and more importantly, without Fresh Look—of course, Fresh Look makes no sense without direct access.

They go so far as to say, because one of the things COMSAT has said is, fine, have direct access, fine, let them have Fresh Look. They cannot get satellite capacity, because we are the ones who are holding it, so one of the things they want to talk to you about is portability of the capacity if they do Fresh Look and if they do compete those contracts competitively.

It is an interesting notion, because if they are so interested in the portability of the capacity, I think one of the things they figure

is, where they are probably going to end up is on a direct access deal with INTELSAT, not with PanAmSat, and not on the cable systems, otherwise they would not be interested in that portability.

But I would suggest to you that you inquire of them, because it truly is their issue and not ours.

Ms. ALEWINE. Mr. Chairman, if I might respond to direct access, and I know this is beginning to sound like he-said, she-said, and I apologize for that.

Senator BURNS. Well, at least it is in public. [Laughter.]

Ms. ALEWINE. I do not know where Mr. Cuminale gets his quotes from that we said this or we said that. I know where I get mine. I get mine from public meetings. To the best of my knowledge, no one in my corporation has ever said, fine, let them have direct access, fine, let them have Fresh Look, we have tied up all the capacity. I have never heard that before.

But let us talk about that capacity, and let us talk about direct access, because a lot of people say that we want direct access to your assets. Well, we happen to own the U.S. portion of the INTELSAT system. Everybody talks about facilities-based competition. Those are, ladies and gentlemen, our facilities. Yes, we were created by an act of Congress, but we have never had one penny of Government funding, one penny of a taxpayer dollar in the creation or our investments in INTELSAT.

This corporation, COMSAT Corporation, was created by an initial public offering of $200 million. It has had shareholder money in it from the get-go, and those are our facilities that we have invested in.

Now, as I said earlier, there is this big brouhaha about all of the big guys attacking, trying to take the little guy's revenue.

Remember the number that I quoted to you? We get $250 million a year of revenue from our INTELSAT business. It is in public documents, so I know this number is correct, and that is just a little more than one of the companies that is on Mr. Cuminale's large company impressive list spent on their ad budget in 1998. Iridium spent $200 million for advertising.

I am having a real hard time, Mr. Chairman, understanding why all of these very big companies now have focused on taking our facilities, taking our assets. Yes, we control access to them, but that does not make us a monopoly. It is just as PanAmSat controls access to their Hughes satellites.

I am having a really hard time, unless you connect the dots, and you say they do not want INTELSAT privatized, they want all of this delayed and tied up in legislation, and COMSAT and Lockheed Martin tied up in knots. They do not want this merger to go through, because in fact they do not want another strong competitor. They would like to keep us at $250 million a year in an intergovernmental organization that cannot take decisions quickly.

That is not procompetitive, and that is not in the U.S. public consumers' best interest.

Thank you.

Mr. SPONYOE. Which I believe is the short or long form, depending upon your perspective, of Senator Gorton's question.

Mr. KULLMAN. Let me just make one comment on direct access, Mr. Chairman. It is not really an issue for INTELSAT. Direct ac-

cess is a national—it is a domestic issue, regulatory issue for each individual country to decide on, but I also want to make clear that we do not see direct access as our carrot. We really see the issue of direct access and privatization as two separate issues. What is important for us is to privatize for business reasons and get on with it as fast as we can.

Senator BURNS. Just about all the questions that I have had today have been covered in the give-and-take and the rhetoric today, and I appreciate that.

I will insert Senator Stevens' statement for the record.

[The prepared statement of Senator Stevens follows:]

PREPARED STATEMENT OF HON. TED STEVENS, U.S. SENATOR FROM ALASKA

I want to congratulate Senator Burns for holding this hearing and for championing this issue in the Senate.

Reforming and bringing true privatization to the international satellite world is a true challenge.

I would argue it is even more ambitious than reforming our domestic telecommunications industry. At least by 1996, Judge Greene had showed us the way by breaking up AT&T.

I've met with Senator Burns on this issue and am convinced that his goal is *to privatize INTELSAT and to ultimately level the playing field in the satellite industry.*

Based on that conviction, I am committed to helping him get a bill to take to conference with Chairman Bliley.

I hope that sometime this summer, I can stand on the floor of the Senate and rename S. 376 the Burns-Bliley bill.

Is this bill perfect? No. But I believe Senator Burns is definitely on the right track.

We need true privatization, we need free market access to all carriers, and we need to discourage monopolistic behavior.

I'm convinced Sen. Burns wants these things too, and I look forward to helping him achieve these goals.

Senator BURNS. We also have a statement by the Majority Leader, Senator Lott, who is supporting our efforts.

[The prepared statement of Senator Lott follows:]

PREPARED STATEMENT OF HON. TRENT LOTT, U.S. SENATOR FROM MISSISSIPPI

Let me first thank my friend Senator Burns, the distinguished Chairman of the Communications Subcommittee, for holding this hearing to build upon past discussions to privatize international satellite operations.

I am grateful for his leadership in moving ahead on this much-needed reform of a 35-year old policy.

The issues are both complex and important in this global marketplace America finds itself in.

Senator Burns has taken the bull by the horns, and I appreciate his willingness and tenacity to tackle this issue.

I am here today to add my personal support to the Chairman's efforts to ensure that customers benefit from whatever approach is finally taken in the international satellite field . . . a field that just a few decades ago was dominated by intergovernmental organizations.

Today's international marketplace is different from the one found in 1962 when all this began. And Senator Burns is right—today's policy solutions must reflect the realities of 1999 and be flexible enough to reach into the next century.

Congress was right in 1962, even visionary, to establish an international cartel—INTELSAT—to blaze the trail of a global communications network. The private sector did not have the capability to do a commercial satellite system.

COMSAT, as INTELSAT's U.S. signatory, has done an excellent job for over 3 decades in carrying out its Congressional charter to fulfill our national policy of global communications. COMSAT has laid a solid foundation.

However, commercial satellite service has come of age. Today, it is a viable opportunity and a real option.

In fact, numerous private companies have established global and regional satellite networks that provide workable commercial services. And these services are growing in demand.

Yes, strides have been made by these intergovernmental entities to privatize. This is good, but this is not enough.

Congress needs to take this opportunity to both encourage and ensure that the new public policy for the next century will provide competition in the new satellite community.

Congress should enact a pro-competitive bill because American customers deserve the benefits.

Congress also needs to look past the surface debate of which organization will provide the services and focus on the ultimate consumer.

Congress also needs to factor in our domestic market as it relates to markets around the globe.

Conrad, you've got a great catchy title for your bill—the Open-Market Reorganization for the Betterment of International Telecommunications Act—or "ORBIT."

You have changed it from your original approach in the last Congress. This is good.

This new bill already enjoys broad bipartisan support from several members of this Committee. This is good.

I am encouraged because the stage is now set for an open debate.

I know that Senator Breaux has some concerns about market access, and other remaining issues may need to be ironed out before a unified Senate position can be achieved . . . but I believe we can.

I have on several occasions spoken with Chairman Bliley about this matter. As most of you know, Chairman Bliley has for years been the champion for satellite privatization in the House.

Chairman Bliley indicated his continued interest and willingness to work together on a bill that can pass both chambers this year. This is good.

Mr. Chairman, it is my understanding that today's hearing is the 1st of a 2 part series, and the next hearing will be for the customers. This is crucial because their needs are the reason why Congress is advancing the competition and choice aspects. Hearing their perspectives will be useful.

I want to thank today's witnesses for their time and insights as we move forward on the debate.

I see some familiar faces.

At this time I do not want to ask questions, but I would like to reserve the right to submit questions at a later date for the record.

I look forward to bringing a consensus bill onto the floor soon for the full Senate's consideration.

Again, Mr. Chairman, thank you for holding this hearing.

Senator BURNS. Any questions that might be directed to you by anybody else on the committee, I would appreciate a response to them and to the committee. All of your testimony will be made a part of the record, and I am sure that we will keep the record open for comments as we continue the dialog on this.

Senator Hollings also has his statement that he wants to enter into the record today, and without objection we will do all of that.

[The prepared statement of Senator Hollings follows:]

PREPARED STATEMENT OF HON. ERNEST F. HOLLINGS,
U.S. SENATOR FROM SOUTH CAROLINA

INTELSAT and COMSAT were initially established when there was no global satellite service. Both organizations have successfully fulfilled their mission in linking the United States and countries around the world by satellite communications. Since their inception, however, the marketplace has changed. Today, there are a number of satellite systems providing a wide variety of services and many more preparing to implement service. Recognizing these changes, INTELSAT is working to become a private company.

While it is critical for INTELSAT to privatize, it is also important that it does so in a pro-competitive manner. The fact is that privitization of INTELSAT in a non-competitive manner, will enable it to distort competition in the U.S. market thereby potentially adversely impacting the ability of U.S. systems to enter foreign markets.

Once INTELSAT is privatized, the role of COMSAT will change. In addition, there has been on-going speculation about the purchase of COMSAT by Lockheed Martin. Before that can occur, however, the statutory ownership restrictions on COMSAT must be lifted. In light of Lockheed's proposal and the privatization of INTELSAT, COMSAT will ultimately has to transition from a signatory to a non-signatory role.

Senator Burns introduced last year as he has again this year, legislation concerning the privatization of INTELSAT. This hearing presents a good opportunity to examine the provisions of Senator Burns' bill—in particular, the provision that addresses the Administration's certification of INTELSAT's privatization. This provision places the Administration in the role of the FCC in reviewing the entry of INTELSAT into the U.S. market.

Thus, I welcome the witnesses and look forward to hearing their testimony. I thank Senator Burns for having this hearing.

Senator BURNS. I appreciate your time today. It has been a long afternoon, very busy, but as we make our way down the trail on this I am satisfied we can come up with a piece of legislation that will do what we want to do and also what you want to do.

Thank you for coming today. These hearings are closed.

[Whereupon, at 4 p.m., the subcommittee adjourned.]

APPENDIX

Federal Communications Commission,
Washington, DC, April 22, 1999.

Hon. Conrad Burns
United States Senate
Washington, DC

Dear Mr. Chairman,

With this letter, I am providing a written follow up to a question you asked in the March 25th hearings on the Open-market Reorganization for the Betterment of International Telecommunications Act before the Senate Subcommittee on Communications (S. 376). I appreciate the opportunity to provide these responses.

You asked for my assessment of the recently created spinoff of INTELSAT, New Skies Satellites, N.V. (New Skies). New Skies was created as a result of a March 31, 1998 Assembly of Parties decision to form a private satellite company incorporated in the Netherlands to provide various video and broadband services.[1] The United States associated provisionally with the Assembly decision in creating New Skies because it believed there was continuing uncertainty as to whether true separation and independence of New Skies from INTELSAT could be effected.[2]

On November 30, 1998, INTELSAT transferred to New Skies five operating satellites and one satellite under construction. New Skies then began operations. At that time, in order to assure continuity of services to U.S. customers already using the satellites transferred from INTELSAT to New Skies, the International Bureau authorized temporary operation of 90 earth stations to operate with New Skies satellites pending Commission action on applications filed by the earth station operators for permanent authority.[3] The authorizations permit licensees to add new customers pending Commission action on the applications of the earth station operators.

In reviewing applications to operate with New Skies, the Commission will apply the standard implementing the WTO Agreement on Basic Telecommunications Services (*DISCO II Order*)[4] for affiliates or spinoffs of INTELSAT or Inmarsat to provide service in the United States. In the *DISCO II Order*, the Commission adopted a presumption in favor of entry for space stations licensed by WTO members. However, the Commission reserved the right to attach conditions to the grant of authority, or in the exceptional case in which an application would pose a very high risk to competition in the U.S. satellite market, to deny the application. The DISCO II presumption in favor of entry will apply to New Skies because New Skies' satellites will be authorized by the Netherlands, a WTO member.

In the DISCO II Order the FCC also set forth criteria that apply to New Skies. These criteria are reflected in S. 376 which would in effecting codify the FCC's approach to considering INTELSAT and Inmarsat spinoff entry into the U.S. market. In determining whether an application to serve the U.S. market by an INTELSAT spinoff raises the potential for competitive harm, the FCC will consider any potential anti-competitive or market distorting consequences of continued relationships or connections between INTELSAT and New Skies, particularly the risk or likelihood of collusive behavior or cross-subsidization. Specifically, the Commission will evaluate the ownership structure of New Skies, including its affiliation with INTELSAT and the effect of INTELSAT and signatory ownership; whether New Skies can directly or indirectly benefit from INTELSAT's privileges and immunities; the extent

[1] INTELSAT Assembly of Parties, *Record of Decisions of the Twenty-Second (Extraordinary) Meeting.* (AP-22-3E) Salvador, Brazil, March 31, 1998.

[2] *See* Statement of the United States appended to the Assembly of parties, Record of Decisions of the Twenty-Second (Extraordinary) Meeting (AP-22-3E) Salvador, Brazil, March 31, 1998.

[3] *Requests for Special Temporary Authority to Operate INTELSAT Satellites Transferring to New Skies Satellites, N.V.,* Report and Order, DA 98–2431, November 30, 1998, (STA Order).

[4] Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States, Report and Order, 12 FCC Red 24094 (Nov. 26, 1997)*(DISCO II Order).*

to which there is arms length conditions governing the relationship between INTELSAT and New Skies. The FCC will consider the extent to which there are separate directors, officers, employees, accounting systems as well as fair market valuing for permissible business transactions that is verifiable by an independent audit and consistent with normal commercial practice; whether there is common marketing or recourse to INTELSAT assets for credit or capital; and whether INTELSAT will register or coordinate spectrum or orbital locations on behalf of New Skies.

In applying the *DISCO II* standards the Commission will assess progress being made toward independence of New Skies from INTELSAT and whether New Skies is unfairly benefitting from its unique INTELSAT heritage to the detriment of its competitors. The Commission will apply *DISCO II* standards to the facts contained in the record. For example, New Skies currently is 100 percent owned by INTELSAT and its signatories. (INTELSAT has a ten percent ownership in a non-voting trust and the signatories have the remaining 90% share). New Skies has entered into various time-limited services agreements with INTELSAT that involve INTELSAT in operation of important aspects of New Skies satellites. In addition, customers inherited by New Skies from INTELSAT continue to look to INTELSAT as a guarantor of service either because contracts have been assigned rather than novated, or the customers are served under "lease back" arrangements.

The FCC staff is reviewing petitions and comments filed in response to the applications, as well as documents submitted by New Skies in February 1999 that reflect INTELSAT and New Skies implementation of March, 1998 Assembly of Parties decision. The staff also has been in discussions with New Skies representative regarding these documents. The staff has requested and is awaiting information from New Skies as to whether New Skies will begin public trading of shares by the end of 1999.[5] We are hopeful of submitting recommendations to the Commission for consideration in the near future.

Thank you again for the opportunity to testify at the March 25 hearing and to expand upon my responses in this letter. If you or your staff have further questions, please feel free to contact me.

Sincerely,

Roderick Kelvin Porter,
Acting Bureau Chief.

[5] *See* Testimony of Ambassador Vonya B. McCann before the Subcommittee on Communications, Senate Committee on Commerce, Science, and Transportation, September 10, 1998.

Written Testimony of Richard Vos, Head of International Satellite Consortia for British Telecommunications plc.

My name is Richard Vos, and I am the Head of International Satellite Consortia on behalf of British Telecommunications plc ("BT") of the United Kingdom. I am responsible for BT's satellite equity investments[1] and the UK Signatory Affairs Office ("SAO").[2] I am also serving currently as the elected Chairman of the Board of Governors of the International Telecommunications Satellite Organization, INTELSAT.[3] I appreciate having the opportunity to submit written testimony regarding S. 376, the "Open-market Reorganization for the Betterment of International Telecommunications Act," on the record of this proceeding.

I believe that on behalf of BT, the UK Signatory to INTELSAT, I can provide a valuable perspective regarding the successful implementation of INTELSAT direct access in the UK since 1994. Moreover, as the representative of the INTELSAT Signatory that initiated the privatization process and as a member of the INTELSAT Board of Governors, I believe that I can provide useful information regarding the process of privatization. Finally, I would like to express BT's opposition to S. 376 in its current form, both from its perspective as an INTELSAT member and UK Signatory, and as a carrier in the U.S. market through BT's wholly-owned subsidiary, BT North America Inc. ("BTNA").

Implementing Direct Access in the UK Has Resulted in Significant Pro-competitive Benefits and Has Strengthened BT's Ambition to Privatize INTELSAT.

The UK successfully implemented Level 4 direct access in 1994. UK operators now deal directly with INTELSAT for their capacity needs, paying the same INTELSAT Utilization Charge ("IUC") as Signatories, including BT. This arrangement is open to all licensed entities. As operators benefiting from this arrangement also invest in INTELSAT according to their usage,[4] they not only pay the flat IUC but receive a return on investment on the same basis as a Signatory.

---

1 BT currently has equity investments in INTELSAT, Inmarsat, EUTELSAT, I-CO, and New Skies Satellites.

2 The SAO was created in 1989 to allow UK-licensed entities to access INTELSAT, Inmarsat and EUTELSAT capacity. The SAO charges a flat fee mark-up over the basic consortium utilization charge (currently 7%) and is separate from BT's commercial operations. The SAO closed for INTELSAT business in 1994 upon the introduction of full and open 'level 4' direct access.

3 The views expressed in this testimony are solely those of BT and are not intended to reflect the views of the INTELSAT Board of Governors.

4 Under the INTELSAT direct access arrangements, operators have the option to request increases and decreases to their basic utilization driven shareholding at the time of an INTELSAT investment share redetermination.

Direct access has reduced the costs of INTELSAT access in the UK far below equivalent charges in the United States. Competition in the UK satellite services market has been significantly increased. At the present time, INTELSAT has around 20 UK entities buying capacity under this arrangement, including a subsidiary of Comsat and a number of other U.S.-owned companies. BT has no role in or visibility of this process, nor does it make or receive payments for or on behalf of any of these entities.

Under an arrangement such as this, there is no room for companies to charge the mark-ups over the IUC that U.S. carriers experience from Comsat. Prices for INTELSAT capacity in the UK, and for services delivered using INTELSAT capacity, are determined solely by what the market will bear.

BT has long believed that the concept of the INTELSAT Signatory acting as the single conduit for those wanting access to capacity is wholly inconsistent with competitive market principles. Furthermore, the UK has long believed that INTELSAT should become more commercial, both to allow it to compete with commercial systems and because the current structure is outdated. In no sense do we feel that implementation of direct access is the end of the privatization process; to the contrary, BT sees implementation of direct access in the UK as a logical and important step towards privatization.[5]

INTELSAT Is Moving Swiftly Toward Privatization.

I believe that there is a clear understanding and acknowledgement among INTELSAT's stakeholders that the organisation must change. At its March 1999 meeting, the INTELSAT Board of Governors instructed the INTELSAT management to perform an in-depth analysis of specific options for changing INTELSAT from an intergovernmental organisation into a private company. INTELSAT management is led by Mr. Conny Kullman, Director General and Chief Executive Officer, who was elected by the INTELSAT Board last year on a clear pro-privatization platform. The INTELSAT Board of Governors will be making formal recommendations regarding privatization to the next meeting of the Assembly of Parties in October 1999.

One of the most important aspects of the privatization process is to develop a mechanism to ensure that INTELSAT's lifeline connectivity obligation can be guaranteed under a private company structure. INTELSAT's role in connecting the world is widely recognized and is of vital importance for substantially all of INTELSAT's Signatories, including BT, and the major U.S. carriers. The principle of continuity of existing services is another critical element. It will not be possible to restructure INTELSAT if this results in existing services being terminated due to difficulties over landing rights. For these reasons, any privatization scheme will necessarily include a mechanism to guarantee INTELSAT's lifeline connectivity obligation.

These and other issues will be discussed intensively over the coming months and will form part of the Board's recommendations to the Assembly of Parties later this year. BT's ambition is that the Board should present a comprehensive package of recommendations to the Assembly of Parties in October 1999 to allow implementation of the chosen way forward during 2000.

BT Opposes S. 376, the Open-Market Reorganization for the Betterment of International Telecommunications Act, in Its Current Form.

The following views are given in the context or BT's position as a substantial investor in INTELSAT and as a user of INTELSAT capacity in the United States, both directly and via our partners.

---

[5] We actively participated in the FCC's recent direct access proceeding, IB Docket No. 98-182, File No. 60-SAT-ISP-97, and we would respectfully refer you to the comments we filed in that proceeding for a more extensive discussion of our experience in the UK.

1. The Current Language in the Bill May Delay the INTELSAT Privatization Process. INTELSAT was created by international negotiations involving vision, ambition and compromise. Likewise, reform of INTELSAT can only be achieved through international negotiation and agreement. Change will happen when the concerns and ambitions of INTELSAT's members are understood and have been fully debated and taken into account during negotiations. As noted above, significant progress has already been made in this privatization process.

The U.S. played the leading role in the creation of INTELSAT and it is appropriate for it to do likewise in the reform process. Indeed, this process would be much the poorer were there to be a lack of ideas and ambition from INTELSAT's members. However, I respectfully submit that the "carrot and stick" structure of the bill, wherein direct access is the carrot held out and given only once appropriate privatization has been achieved, has no place in a process such as INTELSAT reform. The use of approaches such as these may well have the opposite effect of Congress's purpose and result in a delay of privatization.

BT strongly believes that implementation of direct access in the United States would send a positive signal to INTELSAT members regarding the whole privatization process. With over 90 countries having already implemented some form of direct access, there is considerable confusion around the world regarding the apparent reticence of the United States to do likewise. The overall U.S. policy approach and recent WTO commitments favoring open markets and competitive provision of telecommunications facilities and services only serve to underline this confusion.

2. The Bill Erroneously Makes a Link Between Privatization and Direct Access. The bill is based on an inaccurate premise, namely that the privatization of INTELSAT and implementation of direct access are related. Direct access and privatization are separate issues and should not be tied together.

We are not aware of any evidence suggesting that these two issues are linked in the minds of any other INTELSAT Signatory or Party. Direct access in the UK market has actually strengthened BT's commitment to INTELSAT privatization, and we remain keen to have INTELSAT operating on a normal commercial basis. BT's resolve to privatize INTELSAT as soon as possible would not be weakened by the introduction of direct access in the United States.

I am keen also to take this opportunity to dispel the notion that direct access is somehow equivalent to giving INTELSAT market access in the United States. This is manifestly not the case. INTELSAT does not, nor can it under its current structure, offer satellite services to consumers. INTELSAT is permitted only to sell satellite capacity to others for the offering of services. Under a direct access regime, the FCC would continue to control licensing. Implementing direct access, which can now be done appropriately and simply under the existing INTELSAT direct access framework, will simply mean that prices for INTELSAT capacity in the United States will be reduced dramatically. In the UK, this has also resulted in lower prices for consumers, and there should be no reason that this model would not also apply in the United States.

Regarding future access to the U.S. market for INTELSAT as a private company, BT fully accepts and anticipates that the United States would wish to apply the concept of a level playing field between INTELSAT and other commercial satellite companies. Should INTELSAT not comply with prevailing competition laws or other criteria, then it should not enjoy U.S. market access. However, a presumption in favor of access for INTELSAT in the future would confer enormous good will and would, in my judgment, be a very positive contribution to the privatisation process. Such a presumption is clearly in place for the UK situation.

3. "Privatization" Should Be Defined by an Objective Event. If the bill does eventually go forward with privatization as a condition precedent to direct access, there should at least be a clear, objective event (i.e., definition of privatization) that triggers direct access. Specifically, the event of "privatization" should be defined as having occurred when a final vote of approval of privatization by the INTELSAT Assembly of Parties is passed wherein the legal structure and characteristics of the privatized INTELSAT are created.

This would mean that this clearly defined event – and not a governmental certification – would trigger direct access.

4. The Proposed Certification Process Is Flawed. Finally, if Congress would require certification of privatization, such certification must at the very least be done through a public, transparent, and objective process based on clear criteria, within a strict timeframe, and subject to judicial review. The current version of the certification process and factors for consideration would allow debate to go on behind closed doors and endlessly, such that direct access may not be allowed for years even after INTELSAT is privatized.

BT believes that a public, transparent, and objective process in which interested persons are able to express their views, a statutory deadline, and judicial accountability would help to cure these deficiencies. Also, BT believes that the Federal Communications Commission is the proper authority to perform the certification process.

PREPARED STATEMENT OF F. THOMAS TUTTLE, VICE PRESIDENT AND GENERAL COUNSEL, IRIDIUM LLC

INTRODUCTION

Iridium LLC, a Washington, DC-based, global mobile satellite telephone company, appreciates the opportunity to submit testimony for today's hearing. Iridium is pleased that the Subcommittee is considering legislation that addresses the privatization of the intergovernmental satellite organizations (IGOs), a goal Iridium fully supports.

Congress authorized U.S. participation in the IGOs, INTELSAT and Inmarsat, and guided the initial development of the commercial satellite services market by passing the Communications Satellite Act in 1962 and the International Maritime Satellite Telecommunications Act in 1978. It is appropriate that Congress is now turning its attention to the impressive growth of the commercial satellite services market, the major and increasing role of private industry in that market, the resulting need for privatization of the IGOs, and the potential impact such privatization will have on competition in the market for international satellite services.

Satellite legislation dealing with competition in the global marketplace comes around once in a generation. The legislation that will be enacted is likely to be the most significant (if not the only) legislation addressing competition in the international satellite services for many years to come. Iridium is concerned, therefore, that there is nothing in S. 376 that addresses the consequences of Inmarsat's privatization or the effect such privatization will have on market access and competition in the mobile satellite services. Without addressing the privatization of Inmarsat, S. 376 is incomplete. It may address the impact of the privatization of an IGO on the market for fixed satellite services, but it does nothing to promote a fully competitive domestic and international market for mobile satellite services.

Inmarsat was created in 1979 and began providing service in 1982. As Inmarsat's current Internet web site explains,

> "When Inmarsat began service in 1982, its remit was to provide communications for commercial, distress and safety applications for ships at sea.
>
> Inmarsat's name is an acronym of its original full title, the International Maritime Satellite Organization, and, while it has branched out into other, non-maritime markets and changed its name to the International Mobile Satellite Organization, the acronym has remained.
>
> Inmarsat grew out of an initiative of the then International Maritime Consultative Organization. At the time, mobile satellite communication was an unexplored technology and the industry an embryonic, untested one.
>
> So it was decided that Inmarsat should be a joint co-operative venture of governments, with their signatories—nominee organizations, in most cases the country's post and telecommunications provider (PTT)—contributing the capital and bearing the high risk involved."

Inmarsat's web site also explains that,

> "[Inmarsat] has since expanded into land, mobile and aeronautical communications, so that users now include thousands of people who work in remote areas without reliable terrestrial networks, or travellers anywhere.
>
> In addition to maritime customers, today's typical users include journalists and broadcasters, health teams and disaster relief workers, land transport fleet operators, airlines, airline passengers and air traffic controllers, government workers, national emergency and civil defence agencies, and heads of state."

At the time the IGOs were created, there were no privately owned international satellite systems. Satellite technology was still being developed, making satellite-based services both risky and very expensive. As a result of technological advances over the last four decades, it is now economically possible for private companies to provide increased satellite based services with competitive benefits such as lower costs to consumers and expanded services to meet new demand. The convergence of technologies in which the US is preeminent—telecommunications network design, computer-based communications applications, micro-miniaturization of electronic components, and Earth-orbiting satellites—has provided unparalleled access to the advantages to modern telephone and data infrastructures around the globe.

On November 1, 1998, the Iridium system commenced commercial operations, providing mobile satellite services (MSS)—the types of services provided by Inmarsat, but from a constellation of low Earth orbiting (LEO) satellites. The 66-orbiting satellites in the Iridium system function as cellular towers in the sky, providing for the first time a completely global telephone and messaging network that can be used on land, on sea, or in the air.

The Iridium system is not the only MSS system that will provide mobile satellite telecommunications services within the next few years. US-based (LEO) systems such as Globalstar, Ellipso, and Constellation, are at various stages of design, development, and deployment, with Globalstar expected to follow Iridium as the second to market in 1999. There are also regional geostationary mobile satellite systems under development all over the world, including the already operational AMSC system in the U.S. All of these systems will be competing with each other and with Inmarsat and its "privatized" affiliate, ICO Global Communications (ICO). The European-based ICO was established by Inmarsat in 1995. ICO and Inmarsat have substantial common ownership and control. The ICO system is expected to begin services in the year 2000.

In September 1998, Inmarsat's Assembly of member governments reached an agreement to privatize Inmarsat in April 1999.

PRIVATIZATION, COMPETITION AND S. 376

Iridium fully supports Inmarsat privatization. Iridium is concerned, however, that S. 376 does not recognize and address the consequences of Inmarsat's privatization.

When the privatized Inmarsat begins operations as a "private" entity, it will still (at least for another two years) have the same owners (many of which are government-controlled entities) that give it extraordinary access to global spectrum and foreign markets. It will retain the same assets, including the satellites and the huge amount of spectrum it received and controlled as an IGO. No mobile satellite operator that is truly private controls anywhere near that amount of spectrum today or is likely to in the future. No U.S. company can match this incredible competitive advantage.

Inmarsat should not be permitted, through privatization, to transform spectrum from public to private use to the disadvantage of consumers and competition. There is no regulatory relief or remedy available to the mobile satellite services industry to rectify the mobile satellite spectrum inequity.

With S. 376's focus on INTELSAT and fixed satellite services, the mobile satellite services sector is left without any opportunity for competition issues to be addressed in this legislation. S. 376 states that the purpose of the Act is to promote a fully competitive domestic and international market for satellite communications services for the benefit of consumers and providers of satellite services by fully encouraging the privatization of the intergovernmental satellite organizations, INTELSAT and Inmarsat, and reforming the regulatory framework of COMSAT Corporation.

Yet S. 376 fails to meet this purpose in at least two respects. First, it fails to provide competitive benefits to the consumers of mobile satellite services by failing to give the US the ability to use incentives, restrictions, penalties and regulatory benefits necessary to ensure a level-playing field for all competitors in the market for mobile satellite services. Second, it facilitates access to the US market for a privatized Inmarsat that has an unreasonable amount of spectrum globally without

addressing the issue of how this impacts competition in the mobile satellite communications market.

The exclusion of Inmarsat from any review of competitive harm ignores the impact of Inmarsat's privatization on consumers and the mobile satellite industry and is inconsistent with the treatment of INTELSAT in the bill. While it is true that privatization of Inmarsat is apparently ahead of the privatization of INTELSAT, since Inmarsat is scheduled to establish the private company next month, it must be recognized that privatization is not complete on the day that the IGO establishes the new, private company. Privatization is a process that includes a transition phase that begins the day the IGO transfers its assets to a private company and ends after completion of the initial public offering (IPO). Inmarsat is not currently scheduled to issue its IPO until at least another two years after the "private" company is created and the IGO assets transferred to it.

As a matter of US policy, the privatization of Inmarsat should be conducted in a way that meets the same competitive requirements as the privatization of INTELSAT. The provisions of S. 376 on access to the US market, certification, review of license applications, and efficient use of spectrum resources should apply to Inmarsat until it has completed an IPO.

There are other issues that need to be addressed in this legislation to ensure a fully competitive global market for satellite communications. Most importantly, S. 376 should prohibit any merger or exclusive arrangements between the privatized Inmarsat and ICO, the first "privatized" spin-off of Inmarsat.

MARKET ACCESS AND SPECTRUM DOMINANCE

The greatest challenge that Iridium and other privately owned MSS companies face as they prepare to introduce competitive services in the global marketplace is obtaining access to spectrum and markets world-wide. That challenge is made more difficult when their government-owned competitors have the ability to exert influence and/or control over access to markets and spectrum. Iridium has experienced first hand this particular difficulty, which is why it is so concerned about the absence of provisions that address market access for the privatized Inmarsat in S. 376.

The General Accounting Office (GAO), in its July 1996 report, *Competitive Impact of Restructuring the International Satellite Organizations (GAO Report),* raised concern about the competitive edge a newly created affiliate would have over competitors when a large percentage of the affiliate is owned by Inmarsat's signatories. GAO noted that signatories have the incentive to grant access to their markets and preclude or inhibit access to other competitors, even though the competitors might offer services at lower prices.

GAO wrote that "when Inmarsat created ICO, it provided an example of how a treaty organization could restructure by forming a single affiliate whose ownership was primarily restricted to the parent organization and its signatories. "Inmarsat and its signatories have both the incentives and the ability to provide ICO with market advantages over its potential competitors." *GAO Report at* 10.

GAO addressed industry concern about an ICO and restructured Inmarsat relationship, especially since Inmarsat is on record as having an interest in the possibility of a future merger of ICO with a restructured Inmarsat. The GAO noted that "ownership ties between ICO and a largely privatized Inmarsat could create a company with significant advantages in the market that would be free of any of the decision-making or operational burdens imposed by an intergovernmental structure. Such ownership ties might reinforce the incentives of Inmarsat's signatories to open their domestic markets to ICO and the reorganized Inmarsat but not necessarily to potential competitors." *GAO Report* at 14.

Inmarsat and ICO together currently control access to 75% of the spectrum that can be used for global MSS systems through the year 2005. If Inmarsat and ICO are permitted to reunite, the mobile satellite industry will be dealt a devastating blow and the hope of a competitive mobile services market will be unlikely due to the impossibility of other MSS providers obtaining the necessary spectrum to provide global services.

SUMMARY

S. 376 can offer the incentive that will encourage other countries to open access to spectrum and markets. Access to the US market is the only way the US can create a level playing field. Congress can send a very important message to Inmarsat and its owners that access to the US market will be dependent on equitable allocation of MSS spectrum globally. The Commission and the United States government will incorporate the intent of Congress in their decisions on access to the US market.

The privately financed US mobile satellite industry has struggled against crushing financial odds, technical challenges, and barriers to access to spectrum to provide services unheard of fifteen years ago. For this industry to grow and develop and effectively compete, Congress must sweep away the last vestiges of state-supported monopolies and allow the free-market to work. Iridium and other US satellite companies seek a fully competitive market—an equal opportunity to compete for spectrum and customers—not protection from competition.

Pioneering companies like Iridium should not be competitively disadvantaged while Inmarsat begins its transition to a privatized commercial entity with tremendous assets gained at public expense. We urge the Senate to adopt aggressive and forward-looking legislation that ensures that true privatization will occur without harm to US mobile satellite service providers.

We urge the Senate to expand the scope of S. 376 in order to fulfill genuinely the goal of the legislation to promote a fully competitive domestic and international market for satellite communications services for the benefit of consumers and providers of fixed and mobile satellite services.